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MODERN ADMINISTRATIVE SYSTEM

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INTRODUCTION

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Aristotle regarded man as a political animal who naturally longed to live in an orderly society by forming a valid system of government. The system of government in a nation is termed as the political system. The government is an authoritative agency that looks after the affairs of a nation and its citizens. This body has to be organized in ways found to be suitable for a particular nation or state. Power flows through this body to facilitate action and governance. The political system of a nation is governed by the interplay of institutions that constitute it and the welfare of its people. A comparative study of the political systems of the world allows an objective examination of different political systems and alerts us to the similarities in the working of the various political systems.

This book, *Modern Administrative System*, offers a careful examination of the government and administration of different countries such as the United Kingdom, United States, France, Japan, Canada, Switzerland and China. The book is divided into 14 units.

This book is written with the distance learning student in mind. It is presented in a user-friendly format using a clear, lucid language. Each unit contains an Introduction and a list of Objectives to prepare the student for what to expect in the text. At the end of each unit are a Summary and a list of Key Words, to aid in recollection of concepts learnt. All units contain Self Assessment Questions and Exercises, and strategically placed Check Your Progress questions so the student can keep track of what has been discussed.

BLOCK - I
ADMINISTRATIVE SYSTEM OF USA

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UNIT 1 ADMINISTRATIVE SYSTEM OF USA

Structure

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1.0 INTRODUCTION

In this unit, you will learn about the main characteristics of the US Constitutional system. Being a federal constitutional republic, the United States is a country in which powers reserved for the national government are shared by the US President, the Congress and the judiciary. The unit will delve into the various aspects of legislature in the United States, which includes the speaker and the US Committee system. The US has a bicameral legislature and the approval of both the chambers, the Senate and the House of Representatives, is required for any law to be passed.

1.1 OBJECTIVES

After going through this unit, you will be able to:

- Discuss the main features of the US constitutional system
- Describe the legislative process of the US Congress
- Assess the responsibility, organization and position of the US Cabinet
- Explain the establishment of the US Congress and the Senate

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1.2 CONSTITUTION AND GOVERNMENT

The dilemma of recognizing the major determinants of political behaviour is complex in the case of the US because of the vast diversity of American life. Constitutional organization along with the prototypes of political action, frequently act and react upon each other. Prior to learning about the features of American politics, it is essential to return to the hypotheses that have been estimated to clarify the motivational forces, which are behind political systems, as well as the insinuations of these contradictory details for getting an understanding of the American system.

These 'representations' of political life assist in understanding the intricacy of American politics at every stages of activity, in the electorate in general and in the formation of party and pressure groups, along with the functioning of congressional and presidential politics.

Model of Politics

The sense of affection to a region or community, has at all times, been one of the most dominant sources of political loyalty and action. The US grew out of various colonial communities, expanding progressively across the continent, in a way, which has a propensity to lay emphasis on local loyalties. The constitutional make up of federalism that was developed in 1787 provided prospects for the sustained appearance of regional loyalties through the governments of the states. Therefore, the history of the American political system has been powerfully exemplified by sectional outlines of activities by the people of particular geo-states. The Civil War certainly was one of the most vivid confrontations of this nature, wherein the North and South became diverse warring nations.

However, sectionalism continues to be a moving force in American politics all the way through its history. The unanimity of a segment was dependent on some universal awareness and shared interests, which set it apart from the rest of the country and which were of ample significance for the unification of its people, despite class or any other internal division. Often this common interest was economic, on which the entire occupation of the region depended. For example, the significance of cotton and tobacco in the South or grain for the states of the Mid-West. Therefore, all the way through the 19th century, agricultural sectionalism had an immense effect on the American political behaviour. The extreme example of sectional loyalty was provided by the presidential election of 1860, in which not a single vote was cast in all the ten southern states for the candidate of the Republican Party, Abraham Lincoln.

In the last quarter of the 20th century, such extremes of sectionalism no longer existed, and indeed, the US developed a sense of national identity and unity that was more unified than that of older nations in Europe. Yet, sectional and regional factors continue to play a very important role in the working of American politics, a role that can be pragmatic in the stubborn decentralization of the party

system. It is in the interrelationship between this unique brand of nationalism and the reality of the decentralization of political power, that the special quality of the American system is to be found.

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The second model of political motivation is that which looks to the class structure of society as the major determinant of political behaviour. Although a number of political thinkers, such as Locke and Montesquieu, have emphasized this aspect of political behaviour, it was Karl Marx who saw class as the ultimate explanation of people's action. Taken to extremes, this is of course quite incompatible with sectionalism as a force in politics. If political loyalty is really a matter of social class, then regional loyalties will have no part to play in the political system and to the degree that these regional loyalties continue to exist; class solidarity across the nation will be diminished. In fact, recent American political history is largely the story of the complex interaction of these two political motivations, with sectionalism declining as class-consciousness increases. Each of these styles of political behaviour has very different implications for the type of party system one would expect to find. Indeed, if either sectional or class politics is taken to extreme, then party politics as we understand it would be ruled out. There would simply be a civil war either between geographical regions or between classes. The working of the democratic system depends on the fact that these extremes are never realized and that political parties must appeal to both, different sections of the country and different classes of the population.

We may describe our third approach to the political system as the pluralistic approach. This views the political system as a large number of groups, each with a different interest, so that politics is a continually altering model of group activities and interactions. Economic, class and geographic factors are important parts of the pattern, but many other kinds of groups are also important: religious groups, ethnic groups and other social groupings. Moreover, although economic groups play an important part in the political system, they do not come together into two or three big classes for purposes of political action. They are divided among themselves, union opposing union, one type of producer battling with his competitors, agriculture ranged against industry, small businessman against big businessman, the retailer against the manufacturer, and so on.

Class and regional loyalties are disjointed, each group looking for support to win its battles wherever that support is to be found. Thus, we have a picture of the political system as a collection of a large number of groups, of anecdotal size and importance, battling for their interest in a society where no single group dominates. Since the membership of these groups overlaps significantly, there are Catholic and Protestant businessmen, Irish-American and Italian-American labour leaders—there is a continual set of cross-pressure on the leaders of these groups. This helps the processes of compromise between them and moderates their demands. At the extreme, the role of government in such a society is simply to hold the ring, to act as referee between the groups to enable the necessary bargaining

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and compromise to take place. The political machinery simply becomes the mechanism through which equilibrium is achieved between contending interests. As the government's main autonomous interest becomes that of maintaining law and order, there is little hope for active leadership to give directions to the national policy, and political parties have little coherence or discipline. They become merely organizational devices that are devoid of policy content.

Individualism is the final model of political behaviour that must be utilized to scrutinize American politics. In other accounts of the political system, a class, a section or a group dissolves the individual. Political behaviour is determined by class ideology, regional loyalty or group interests and the individual has little or no implication in affecting the outcome of political situations. Such interpretations of political life seem to bear little relation to the mainstream of traditional democratic thought. For theorists such as John Stuart Mill, the individual citizen was the central concern of writers on politics, and personality and individual choice were crucial elements in political decisions. It is ironic that it is in America, the land of individualism par excellence, that the students of political behaviour have demolished the classical description of the democratic political system. They have suggested that, in the 20th century, the influence of family, class, local community or other relevant social grouping is far more important in determining voting behaviour, rather than the knowledge of issues that face the electorate. In reality, however, individualism plays a role of greater importance in America, than in the political system of any other modern democratic state.

Conservative Political Tradition of the US

Concurrent to the formation of the American state system, the conservative tradition appeared on the US political scene. The Constitution of 1787, which had become the most complete expression of the philosophy and politics of bourgeois liberalism in constitutional rights, contained conservative features itself. While sanctifying the existence of slavery for many decades, it upheld the indivisible supremacy of the bourgeoisie in the north and the plantation owners in the south. These were united in one bloc by common economic and political interests. Till that time, the remarkably constructive conditions, both extrinsic and intrinsic, for the development of capitalism in the United States ensured the harmonious coexistence of two ruling classes: western farmers and southern plantation owners.

The opposing nature of their policies was the main topic of the internal political debates within the country. This led to the discussion of the following:

(i) Broad and narrow interpretations of the Constitution
(ii) The relationship between the powers of the central federal government versus the rights of the state
(iii) The priority of industry over agriculture and vice versa

In the first quarter of the 19th century, these deliberations did not leave any doubt about the value of compromise by different classes, which were achieved

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on the issue of slavery. The entry of American capitalism into the initial stage of the Industrial Revolution during the 1830s and 1840s, led to a severe escalation of class conflicts that rose from the coexistence of two social systems: free labour and slavery. It was exactly during this period that the conservative tradition finally took shape within the orb of politics, and became an integral feature of the party tandem.

During the course of two decades that led to the Civil War, compromise was the banner of conservatism in the struggle with the politically organized movements. These movements had liberal to abolitionists on the one hand, and extremist plantation owners from the south on the other. However, conservative politics proved inadequate for the practical demands of time.

The inevitability of an instantaneous solution to the problem of slavery, which had become the main obstruction in the path of the development of US capitalism, disturbed the balance of conservative powers in politics. The revolutionary tendencies in the American society ran so deep that it was not possible to overcome them, even with the most refined policies of compromise. The two-party system of that period, which had become an obstruction to socio-political development, by the middle of the 1850s had been wrecked and disorganized. The Whig Party had finally disappeared from the political arena. The disintegration of the two-party combination unleashed the forces of supporters and opponents of slavery, which were earlier suppressed within its devices. The struggle between them became the primary ingredient of American politics, till the beginning of the Civil War. However, the adherents to the conservative tradition did not surrender. Throughout this time, the defenders of the idea of compromise did not lose hope for the possibility of returning politics to the conservative helm. The secession of the southern states and the Civil War that followed created completely new and alien conditions in which the conservative tradition was forced to operate.

The campaigns for the presidential election of 1860 completed the process of separation of the country's political forces, over the issues of slavery and the attitude toward supremacy of southerners in the federal union. It also contributed to the crystallization of ideological positions by various divisions within the parties. The spectrum of politics, which preached conservative ideology on the eve of the Civil War, was broad enough to cover all the existing parties to some extent or another.

One of the bastions of conservatism was in the Republican Party, which had entered the national political arena in 1856. The conservative Republicans were quite a strong and influential group in political circles. Their leaders included Abraham Lincoln's ally Orville Browning (Illinois), Edward Bates (the well-known Missouri politician), Supreme Court Justice John McLean (Ohio), Senator William Dayton (New Jersey), Congressmen Thomas Corwin (Ohio), Edgar Cowan (Pennsylvania) and Albert White (Indiana). The conservative faction consisted of former representatives of parties that had fallen apart: the 'Know Nothings' and

'Jacksonian' democrats, who were the opponents of slavery. However, the largest conservative contingent carried the experience of political struggles under their belts, under the banner of the Whig Party.

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The proof of the resilience of the conservative positions in the party was their dominating influence in the Republican organizations of Indiana, Pennsylvania and New Jersey and the visible effect on the course of party organization from New York, Massachusetts and Illinois. The conservative Republicans' programme on the issue of slavery, which was completely inherited from the ideological baggage of the Whigs, demanded a resurrection of the conditions of the Missouri compromise in 1819–1821, on laying the borders of the free and slave territories. It meant the virtual acceptance of the distribution of the slave system in the west, which extended to the south from a conditional line of the 1820 compromise and the entry of new slave states into the union. The conservatives opposed expansion of slavery, but they did not consider appealing to the federal authorities to help stop expansion by declaring this ploy unconstitutional. They reduced the whole spectre of contradictions between the north and the south to rivalry in the struggle for political power over the union. This was an effort to put an end to the southerners' hegemony in deciding key domestic political issues. The conservatives condemned slavery only from the point of view that it was the foundation of the south's absolute power. They declared their readiness to make new compromises with the southerners to achieve political stability in the country.

The conservative Republicans articulated the interests of the American bourgeoisie from heavy industry, who had long concentrated on markets in the 'free states,' and relied little on the delivery of goods from the slave south. They continued to follow the Whig conception of socio-economic development in the country. They were the supporters of swift industrialization, and they held to the theory of an active role for the government in inspiring economic growth in the US. The conservatives also defended the idea of introducing protectionist tariffs and creating a central banking system.

The conservatives differed rather significantly from their party colleagues, both the radical and moderate Republicans, on the issue of slavery. Both, the radicals and moderates forcefully upheld the principle that had formed the foundation of the Republican Party platform during the campaign of 1860, which limited the system of slavery to within its existing boundaries. A major contingent of the Whigs and the nativists from the mid-Atlantic and border states and from the states of New England, who did not wish to be associated with the Republican Party, also held conservative views. They came forward on the eve of the election campaign of 1860 with the idea of forming a new organization, a constitutional union party. This development was noticed by the Republican leadership. However, on the whole, the Republicans pointed to the non-constructiveness of the unionists' course.

The conservative faction of the Democratic Party, which had nominated Stephen Douglas as its own candidate for president drew support mainly from

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those states in the northeast, where there was a concentrated bourgeoisie of trade and finance, which had prospered from commercial enterprises with the south plantation. Conservative democrats, brought up in the spirit of northern political traditions, has a destabilizing influence in the inferno of the slavery problem that endangered the foundations of the political system in the country. They followed the widening conflict between the north and the south with alarm, and attempted to crush the topic of slavery with all their power. They tried to counterbalance the growth of the political influence of both, open opponents and extremists from the southern camp.

In spite of all the differences in the views of the conservative groups from various parties on the issue of slavery and the ways to deal with it, they were certainly united by an obvious attempt to prevent conflict between the north and the south from becoming worse.

Abraham Lincoln's victory in the 1860 presidential election marked the end of the slave-owners' political hold on national power. It served as a signal to the southern extremists to split and form an independent slave government (the Confederacy).

Main Features of the US Constitution

On the basis of the preceding discussion, the following four features of the US Constitution can be discerned:

(i) There is a balance of power between the main components of the government such as legislative, the Congress, executive, the President, the various government agencies and the Supreme Court. The Congress works out laws, which the President can veto. If this is not so, these laws have to be enforced by the executive to have any power, and the executive branch decides the due course unless the Congress passes a law to forbid the action. The Congress also enjoys the power to impeach the President. The judicial branch has emerged as a part of the balance of powers, as it seizes the power to declare laws as unconstitutional, but this was not the case in the original Constitution.

(ii) The Constitution renders the federal government only with powers that have been listed for them in the Constitution, and any non-listed powers reside with the states or the people. These are known as 'enumerated powers'.

(iii) The state governments play the role of keeping a check on the power of the federal government. The Constitution articulates that any powers not actually provided to the federal government are retained by the states or the people.

(iv) The Bill of Rights actually lists things, which the federal government is not permitted to do. The people also keep hold of the un-enumerated powers, which are not particularly provided to the federal government or the states.

US Federalism

Being a federal constitutional republic, the United States is a country in which powers reserved to the national government are shared by the US President, the Congress and the judiciary. In addition, sovereignty is shared by the federal government with the state government. The President is the head of the executive branch, and is not under the control of legislature.

The power of legislature is divided between two chambers of the Congress: the Senate and the House of Representatives. The Supreme Court and lower federal courts together compose the judicial branch, and exercise judicial power. It is their function to interpret the Constitution of the United States, and its federal laws and regulations. They also resolve disputes between the two branches of executive and legislative. The Constitution explains the layout of the federal government. Since the American Civil War, the American politics has been dominated by two parties: the Democratic Party and the Republican Party, though other parties also exist.

The political system of the United States is different from most of the developed democracies in many ways, such as the following:

- Power of upper house of legislature is more than what is seen in other nations
- The Supreme Court holds wider scope of power
- Power is separated between the legislature and executive
- Only two main parties dominate the American politics

The American Constitution creates a federal entity. This is one of the dominant features of the American governmental system. However, the state government also caters to many people. All of them are divided as subjects to a variety of units of the local government. Counties, municipalities and special districts are the units of local government. The history of the country is reflected by the multiplicity of jurisdictions. The states created the federal government. They were established separately as colonies with their own and independent government. These colonies created their units of local government for the smooth conduct of the various functions of the state. New states were admitted and managed on the basis of existing ones during the expansion of the country.

Check Your Progress

1. List any one feature of the US constitution.
2. How does the political system of the US differ from those of other developed countries?

1.3 CONGRESS

The various aspects of the American legislature are mentioned in this section.

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The US Speaker: Power and Functions

The Speaker of the United States House of Representatives, or Speaker of the House presides over the United States House of Representatives. The office of the speaker was constituted in 1789 by Article 1, Section 2 of the United States Constitution, which states in part, 'The House of Representatives shall choose their Speaker...' The present speaker in the United States House of Representatives is John Boehner, a Republican representing Ohio's 8th congressional district. Although the Constitution does not state that the Speaker ought to be an elected Member of the Congress, a non-member has never served the post. After the Vice President, the speaker stands second in the presidential line of succession, and before the Parliament pro tempore of the US Senate. The speaker is required to set the party's legislative agenda. The Speaker is generally not required to supervise debates, as this task can be delegated to the other members of Congress of the same political party. Apart from the regular duties involving heading the House and the majority political party, the speaker is also required to perform administrative and procedural functions, and act as the representative of his or her congressional district.

Partisan Role

The political functions of the speaker are not addressed in the Constitution, but in the case of the US, the head of the majority party in the House of Representatives traditionally outranks the majority leader. Even though the speaker is entitled to vote, he/she generally neither takes part in the debate, nor votes except on rare occasions. He/she has to ensure that legislations supported by the majority party are passed by the House. While doing so, the speaker is allowed to use his/her authority to determine when each Bill reaches the floor. The speaker is also the chairman of the majority party's House Steering Committee. Whereas in functioning, the speaker heads the House majority party, the same cannot be said of the President protempore of the Senate, whose office is only ceremonial and honorary in nature. Also, the role played by the speaker depends to a great extent on whether the President and the speaker belong to the same party. In case where they belong to a single party, the speaker's role is quite reduced. For example, Speaker Dennis Hastert did not play a very prominent role during the presidency of fellow Republican George W. Bush. But it might also happen that the speaker will have a prominent role to play even when the President and the speaker are of the same party. For example, Speaker Nancy Pelosi had a major role in fellow Democrat Barack Obama's presidentship.

Contrarily, when the speaker and the president are from rival parties, the speaker is certain to play an extended role. The speaker holds the most important

position in the opposition party, and is generally the main public opponent of the president's agenda.

Presiding Officer

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The speaker is also the presiding officer and has many powers accompanied with a lot of responsibilities, which he/she usually delegates to others. He/she may choose any Member of the House to act as Speaker pro tempore and preside over the House. The party may change the presiding officer as it sees fit, who may or may not be the speaker. Nevertheless, as a rule he or she is addressed as 'Mister Speaker' or 'Madam Speaker' while on the floor of the House. The speaker also has to choose the chairman who shall preside over the Committee when the House resolves itself into a Committee of the Whole. Those who wish to speak in this assembly have to get an acknowledgement by the presiding officer. The debate is also controlled by the presiding officer, who can call on members according to his/her wish. This officer must also maintain decorum during the debating session. He can instruct the Sergeant-at-Arms to implement the rules.

A speaker also influences the processes of the committee because he or she chooses nine out of thirteen members of the powerful committee on Rules, subject to the approval of the conference of the majority party. He/she is also responsible for the appointment of all the members of select committees and conference committees. He/she also has to decide the committee that shall consider it. The speaker can also participate in the debate and also vote, but this power can be evoked only in extraordinary circumstances. Generally, the speaker uses his/her voting power only when their vote is decisive and of grave importance.

Different functions

The Speaker presides over all joint sessions and meetings. The Twelfth Amendment, however, states that the President of the Senate should preside over the joint sessions of Congress when it assembles to count electoral votes and to accredit the results of a presidential election. The supervisory functions of the speaker are further invoked when he or she has to oversee the officers of the House: the Clerk, the Sergeant-at-Arms, the Chief Administrative Officer and the Chaplain. The Speaker has the power to dismiss any of these officers. He/she also appoints the House Historian and the General Counsel and, jointly with the Majority and Minority Leaders, appoints the House's Inspector General.

However, no such instance has been observed where the presidential succession has entitled the speakers to become the president. Under the 25th Amendment, the declaration has to be made to the speaker about the presidential ability or inability to resume the presidency.

The US Committee System

Laws of the US are decided and debated in the Congress. This usually takes place in the committees. The committees are constituted in each chamber of the

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Congress and have to perform particular functions and facilitate legislation. They help the legislative bodies to perform their work faster by constituting smaller groups. The number of committees and sub-committees in the Congress is close to 250. All of them are given to perform diverse functions and are composed of the congressional members. All chambers of the Congress have their separate committees; however, joint committees that comprise members of both chambers are also formed. The committees are governed by their own set of rules, thus rendering all panels their unique character.

The Senate comprises standing committees for the following subjects:

- Agriculture, nutrition and forestry
- Appropriations, that take care of the finances of the federal government, thus rendering it one of the most powerful Senate committees
- Armed services
- Banking, housing and urban affairs
- Budget
- Commerce, science and transportation
- Energy and natural resources
- Environment and public works
- Finance; foreign relations
- Healthcare, education, labour and pensions
- Homeland security and governmental affairs
- Judiciary
- Rules and administration
- Small business and entrepreneurship
- Veterans affairs

These standing committees operate like permanent legislative panels, and their various sub-committees tackle the essential duties of the full committee. There are four select committees that handle specific tasks in the Senate: Indian affairs, ethics, intelligence and aging. These are charged with taking care of functions that may be termed as housekeeping-type functions, such as ensuring that honesty prevails in the Congress and that the American Indians are treated well. The committees are chaired by a member belonging to the majority party, who is often a senior member of the Congress. The members for the committees are allocated by their respective parties. There is a limitation on the number of committees that one member can become a part of, in the Senate. The committees are allowed to appoint their own staff, but the majority party often directs these judgments.

The House of Representatives comprises many committees that are the same as the Senate, such as the following:

- Agriculture
- Appropriations
- Armed services
- Budget
- Education and labour
- Foreign affairs
- Homeland security
- Energy and commerce
- Judiciary
- Natural resources
- Science and technology
- Small business
- Veterans affairs

Most committees of the Congress take care of legislation or the passing of laws. The following are the ways in which they function:

- The number of Bills proposed in the Congress in its two-year session is much more than the number of Bills that are considered for debate. The difference lies in thousands.
- A Bill that finds favour has to go through the following stages in the committee:
  - o The executive authorities provide their written remarks on the proposed measure
  - o Hearings are held by the concerned committee, where the witnesses give their testimony and respond to any queries
  - o The committee fine-tunes the measure, occasionally with inputs from members of Congress that do not belong to the committee
  - o Upon the agreement on the language of the measure, it is forwarded to the full chamber where it is debated
- Conference committees that generally comprise members of the standing committee from the House and Senate and whose members had considered the legislation first, also help in settling one chamber's version of a Bill with the version of the other.

Legislative Process in the Congress

The American Constitution does not make any provisions for the cabinet. The so called cabinet is the product of the customs and the laws passed by the Congress.

The term 'cabinet' came into use during president George Washington's term in 1793. He used to seek advice from his four secretaries, whom he called his confidential advisors and later this body came to be known as the cabinet.

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The American cabinet is totally different from the parliamentary cabinets in other countries. It is an extra-constitutional and extra-statutory body. It is an advisory body that aids and advises the president in discharge of his duties. Eventually, separate departments of the administration were made under the charge of one advisor each. They are called secretaries and these secretaries are the heads of the departments and at the same time, assume the role of the president's advisers. They are collectively known as the President's cabinet.

The secretaries are appointed by the President on the advice of the Senate. Generally, the Senate does not hinder the President's selection of secretaries. The President has exclusive authority to remove the secretary, if the former is not happy with his work. Initially, the cabinet started with three departments: state, treasury and war departments; now, there are twelve such departments. All these departmental heads comprise the cabinet. Their appointment is made by the president. He does not have any restriction on the selection of secretaries. While selecting a secretary, he gives preference to experience, ability and geographical situations. He can even appoint people from opposition if he feels they can be the best advisors. George Washington tried it, but failed because the advisors from the opposition created many hassles for him in his administration, and finally, he had to reject them and select people from his own party. Since then, it has become a convention that the president selects advisors from his own party for the political homogeneity.

Meetings

The cabinet ordinarily meets once a week. There are no formal rules for the meetings. The president only decides the matters to be discussed in the meetings. Meetings are held in his room in the White House. There are fair and frank discussions in the meetings, but no official record of these meetings is maintained. The proceedings are kept confidential. The decisions of the cabinet are announced as the decisions of the president only.

Responsibility of the Cabinet

The cabinet in America is called the official family of the president. It does not have independent powers or prestige. It is not a policy-making body. It does not have individual or collective responsibility. The President cannot give any responsibility to the cabinet. He creates and dissolves the cabinet. The cabinet does not have any legal sanction. It is dissolved with the departure of the president.

Responsibility of the Secretaries

As the heads of different departments, the secretaries are individually accountable to the president for their functioning in the departments. Consecutively,

for efficient administration in their individual departments, they are assisted by junior secretaries.

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Organization of the department

Each department is divided into bureaus, which are headed by a commissioner or a bureau chief. The bureau is further divided into divisions. It is the duty of the secretary of the department to see that his department works competently with full assistance and harmonization between bureaus and units of division. They are not accountable to the legislature for any action of theirs. They are only answerable to the president. But the Congress can summon any secretary for explanation, when there is a need to do so, or when the Congress constitutes an investigation committee to investigate the complaints received against any department. The secretary is called to get information or clarification and not for accountability.

Position of the Cabinet

The position of the American cabinet is what the president makes it. It is formed only to assist and advise the President, but it is up to the President to accept the advice or not.

The US Congress: The Senate and the House of Representatives

In 1787, when the founding fathers of the US drafted the Constitution (a Constitution which is still valid today), they chose the US Congress for the very first article. The Constitution gave the Congress the power to make laws for the federal government, the capability to check the actions of the president and the duty to stand up for the American people.

Constitutions reflect the beliefs, goals and aspirations of their authors and in many cases, the values of a given society. In this way, the American Constitution is no exception. To be able to understand the principles on which the US Congress was established, one must first understand the politics, which surrounded the formation of the United States of America.

The founding of British colonies in what was known as the 'new world' is only one part of the history of the Americas, but it is fundamental to the history of the United States. It was from the British colonies that, in 1776, a new nation was born. The first British colonists landed in 1585, in what is now Virginia. Life was difficult in the new world, and many of the early colonies surrendered to disease, famine and attack by the native 'Indian' tribes. The first colony to conquer these difficulties was established in Jamestown, Virginia, in 1607. Their success was due to two reasons: surviving the first winter with the aid of friendly Native Americans and an ability to grow tobacco. The colonists had discovered a mix of Caribbean and mainland

American tobacco leaves which were appealing to the European taste and trade with the 'old world' had become both, possible and lucrative. By 1732, thirteen colonies had been established up and down the eastern seaboard of North

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America. These colonies began to thrive through trade, and soon found a degree of autonomy from the British Government. Colonial assemblies were established in America, and these began to check the power of resident royal governors, often taking control of the characteristics of taxation and expenditure. Steadily, the principles of self government were becoming ascertained in the minds of the colonists.

As the 18th century progressed, the British Crown and Parliament once again began to look to the west. The colonies had proved to be a success, and Britain wanted to expand its control of the continent. Its efforts directed at westward expansion, however, meant clash with the French forces who had established a powerful position in North America. The French-Indian War lasted from 1754–1763, until the French forces were defeated. This left the British in control of a large area. Presently, this large area is Canada and the US. The cost of the war and the resources needed to control their recently expanded western empire put a strain on British finances, and led the Parliament to look for new ways to raise revenue. Having decided that the colonies should pay more for their own defence, the British Parliament passed a series of acts, which levied taxes on colonial trade.

The British actions had endangered the ability of the colonies to trade freely and given the historical importance of colonial trade, this caused a great deal of bitterness. Over the next ten years, protest over British taxation and oppression grew, occasionally breaking into violence. Matters came to a head in Lexington, Massachusetts in 1775 when a raid by British troops on colonial militias led to full scale fighting. This marked the beginning of the American Revolution.

A formal declaration of independence was issued on 4 July 1776. Largely written by Thomas Jefferson of Virginia, the declaration set the grounds on which the colonies claimed their right to throw off the British rule. Behind the declaration were the ideas of the 18th century philosophers and writers such as Thomas Paine and John Locke. These ideas were widespread among the aristocracy of that time. These ideas would go on to play a large part in writing the Constitution.

The War of Independence formally ended in 1783 with the signing of the Treaty of Paris, in which the British Crown recognized the independence, freedom and sovereignty of thirteen former colonies. With the certainty of victory, the thirteen states were faced with the task of devising a system of government. Having just conquered what they viewed as a tyrannical power, the leaders of the new states had no intention of replacing the British Crown with their own monarch, or creating a central government. However, it was recognized that some form of central administration was inevitable for a new found independent nation.

There was never an issue that the new US would be anything other than federal. A federal state maintains more than one level of government, with each having their own rights and independence. Unlike in Britain, where the government in London is paramount and can create, alter or abolish local governments as it sees fit, the new US Constitution maintained the autonomy of individual states. They created a central or federal government with certain powers and responsibilities that rose out of necessity.

As the failure of the articles of confederation showed, there were certain jobs that were necessary for the success of the new nation that could not be carried out by the state governments alone. On the other hand, under the new Constitution, the state governments intended to be the primary level of government, with responsibility for their own affairs and those of their citizens. The federal government was to be restricted to those areas, which fell outside of the individual state: regulating trade between states, establishing a national currency, conducting foreign affairs and controlling the national military forces. This ideal, where each level of government had its own separate areas of influence, was known as dual federalism. Such a pure form of federalism was going to be short lived, but for the early years of the US, it was the state governments which seized power.

The Constitution established a system whereby each branch of government would be checked by another. A bicameral legislature was chosen so that the Congress could act as a check upon itself in effect. For any law to be passed, the approval of both chambers would be considered necessary. These two chambers, which make up the US Congress, were the Senate and the House of Representatives.

The Senate

The Senate of the US is generally known as the greatest deliberative body in the world for a number of reasons. Right from its beginning, the Senate chamber has been the setting of some of the most moving, influential and consequential debates in the American history.

First, the Senate is mainly a legislative body. It has the power to pass legislations that may become law, or to prevent legislations from becoming law. Moreover, it is responsible for approving or denying consent to ratify treaties, for approving and advising on presidential nominees and trying impeachments. Till date, it is more powerful and significant than any upper chamber across the world. Those who framed the Constitution wanted the Senate to be an incomparable legislative body, such that it should be both, unique in its structure and superior as an institution. They believed that this was essential for the republic to endure. So, the framers provided for the following, among other things, in the Senate: equal representation of every state; terms extending six years, beyond those of the house and the president; elections in which only one-third of the total members would stand before the people every two years; and a minimum age requirement to attract 'enlightened citizens' to serve the body. These characteristics lent an exclusive character to the Senate–a small, stable, stately, thoughtful, independent, experienced and deliberative body. With equal legislative authority for the House of Representatives, the framers expected that the Senate would remain steady in a representative democracy. This, along with its duties specified in the Constitution, was the framers' design for the Senate. However, the Senate required a structure to operate. And that structure has for more than 200 years taken the form of Senate procedure: standing rules, rule making statutes and precedents.

In 1789, the first Senate assumed twenty standing rules. Surprisingly, sixteen of those rules still form the core of the Senate procedure today. Since 1939, the Senate has assumed twenty-five rule-making statutes. The presiding officer has established a quantity of precedents over the course of the Senate's history to fill nearly 1,600 pages in the seminal reference work, known as the 'Riddick's Senate Procedure'.

The Senate's rules and precedents are nothing less than the institution's genetic material: they have evolved over a period of time; they are entwined and complex. Those who unlock, understand and apply the Senate procedure have an edge over their colleagues and the course of the Senate's negotiations. Nevertheless, most of all, together, the Senate faithfully reflects the framers' design and ambition for the body. It is a body that remains true to the Senate's two paramount values—unlimited debate and minority rights.

House of Representatives

A complex body of rules, precedents and practices governs the legislative process on the floor of the House of Representatives. The official manual of house rules is more than a thousand pages long, and is complemented by more than twenty-five volumes of precedents. The ways in which the House applies its rules are moderately conventional, at least in comparison with the Senate. Some rules are certainly more multifaceted and more difficult to interpret than others; but the House does not tend to follow parallel procedures under similar circumstances. Even the ways in which the House does not have a propensity to follow similar procedures, generally fall into relatively limited number of recognizable patterns. Most of the rules that representatives may call upon and the procedures that the House may follow are fundamentally important. The majority of members should be able to work their will on the floor in due course. While the House rules normally identify the significance of permitting any minority to present its views and sometimes to suggest its alternatives, the rules do not enable that minority to filibuster or use other devices to prevent the majority from prevailing without excessive delay.

Modes of procedure

There is no one single set of course of action that the house always follows, when it mulls over a public Bill or resolution on the floor. In some cases, the House rules require certain kinds of bills to be considered in certain ways. More often, conversely, the House chooses to use whichever mode of consideration is most fitting for each bill, depending on factors such as the importance and potential cost of the Bill and the amount of controversy over its provisions and merits. The differences among these packages of procedures rest largely on the balance that each strikes between the opportunities for members to debate and propose amendments, on one hand and the ability of the house to act swiftly, on the other.

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Check Your Progress

3. State any one power of the presiding officer.
4. Who is responsible for the appointment of the members of select and conference committees?
5. When did the American War of Independence formally end?
6. State the powers of the Senate.
7. When did the first Senate assume twenty standing rules?

1.4 ANSWERS TO CHECK YOUR PROGRESS QUESTIONS

1. One of the prominent feature of the US Constitution is the balance of power between the main components of the government such as legislative, the Congress, executive, the President, the various government agencies and the Supreme Court.
2. The political system of the United States is different from most of the developed democracies in many ways, such as the following:
   - Power of upper house of legislature is more than what is seen in other nations
   - The Supreme Court holds wider scope of power
   - Power is separated between the legislature and executive
   - Only two main parties dominate the American politics
3. The speaker as presiding officer may choose any Member of the House to act as Speaker pro tempore and preside over the House.
4. The speaker is responsible for the appointment of all the members of select and conference committees.
5. The American War of Independence formally ended in 1783 with the signing of the Treaty of Paris.
6. The Senate has the power to pass legislations that may become law, or to prevent legislations from becoming law.
7. In 1789, the first Senate assumed twenty standing rules.

1.5 SUMMARY

- The US grew out of various colonial communities, expanding progressively across the continent, in a way, which has a propensity to lay emphasis on local loyalties. The constitutional make up of federalism that was developed

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in 1787 provided prospects for the sustained appearance of regional loyalties through the governments of the states.

- However, sectionalism continues to be a moving force in American politics all the way through its history. The second model of political motivation is that which looks to the class structure of society as the major determinant of political behaviour. We may describe our third approach to the political system as the pluralistic approach. This views the political system as a large number of groups, each with a different interest, so that politics is a continually altering model of group activities and interactions. Individualism is the final model of political behaviour that must be utilized to scrutinize American politics.
- Concurrent to the formation of the American state system, the conservative tradition appeared on the US political scene. However, the secession of the southern states and the Civil War that followed created completely new and alien conditions in which the conservative tradition was forced to operate.
- In spite of all the differences in the views of the conservative groups from various parties on the issue of slavery and the ways to deal with it, they were certainly united by an obvious attempt to prevent conflict between the north and the south from becoming worse.
- The Speaker of the United States House of Representatives, or Speaker of the House presides over the United States House of Representatives. Apart from the regular duties involving heading the House and the majority political party, the speaker is also required to perform administrative and procedural functions, and act as the representative of his or her congressional district.
- All chambers of the Congress have their separate committees; however, joint committees that comprise members of both chambers are also formed. The committees are governed by their own set of rules, thus rendering all panels their unique character.
- The American cabinet is totally different from the parliamentary cabinets in other countries. It is an extra-constitutional and extra-statutory body. It is an advisory body that aids and advises the president in discharge of his duties. The cabinet in America does not have independent powers or prestige. It is dissolved with the departure of the president.
- The War of Independence formally ended in 1783 with the signing of the Treaty of Paris, in which the British Crown recognized the independence, freedom and sovereignty of thirteen former colonies. However, it was recognized that some form of central administration was inevitable for a new found independent nation.
- As the failure of the articles of confederation showed, there were certain jobs that were necessary for the success of the new nation that could not be carried out by the state governments alone. A bicameral legislature was chosen so that the Congress could act as a check upon itself in effect. For

any law to be passed, the approval of both chambers would be considered necessary. These two chambers, which make up the US Congress, were the Senate and the House of Representatives.

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1.6 KEY WORDS

- **Federalism:** Federalism refers to a type of government in which the power is divided between the national government and other governmental units.
- **Sectionalism:** It refers to excessive devotion to local interests and customs.
- **Confederacy:** The confederacy was a government of eleven American southern states that existed from 1861 to 1865.
- **Cabinet:** The cabinet is a committee of senior ministers responsible for controlling government policy.

1.7 SELF ASSESSMENT QUESTIONS AND EXERCISES

Short-Answer Questions

1. What are the main characteristics of the political system in the United States of America?
2. Who is a speaker? What are his powers and functions?
3. Write a short note on the US Senate and the House of Representatives.

Long-Answer Questions

1. Discuss how the speaker plays the role of a partisan and a presiding officer.
2. Discuss the responsibilities of a cabinet and the secretaries.
3. Examine the main features of the US Constitution.

1.8 FURTHER READINGS

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UNIT 2 THE AMERICAN PRESIDENT AND THE AMERICAN CIVIL SERVICE

Structure

2.0 Introduction
2.1 Objectives
2.2 Executive Office of the President
2.3 American Civil Service
2.4 Answers to Check Your Progress Questions
2.5 Summary
2.6 Key Words
2.7 Self Assessment Questions and Exercises
2.8 Further Readings

2.0 INTRODUCTION

In this unit, you will learn about the election, term, qualifications, powers and limitations of the President of the United States, considered the most powerful executive position in the world today. The unit will also delve into the establishment of the United States Civil Service Commission, and understand the reforms brought about by the Civil Service Reform Act of 1978.

2.1 OBJECTIVES

After going through this unit, you will be able to:

- Discuss the responsibilities of the President of the United States
- Describe the role of the American Civil Service

2.2 EXECUTIVE OFFICE OF THE PRESIDENT

The US Constitution has bestowed all executive powers in the hands of the president. The president is the Chief Executive Head of the state in the US. There are presidents in parliamentary democracies also, but they are nominal executives. They have to work according to the advice of the cabinet, and are answerable to the legislature. India is a great example of one such democratic nation. The president is the real executive in the US. He and his cabinet are not answerable to the legislature. He is the supreme authority in the executive vicinity. His cabinet is actually a personal

team that is meant to advise him. This team is neither responsible to legislature, nor does it have any collective responsibility. The Constitution has given powers to the president, and made him the real executive.

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Harold Joseph Laski, an English political theorist, has rightly remarked about the presidential position: 'There is no foreign institution with which in any sense, it can be compared because basically there is no comparable foreign institution. The President of the US is both more or less than a king; he is also both more or less than a prime minister.'

Election Procedure

The president is indirectly elected by an electoral college of each state. Each state elects the electors who are equal to the number of senators and representatives in the Congress, from the state concerned. They meet in each state, and cast their votes on the day fixed for presidential election. The election of the President of America goes by the calendar.

The presidential electors (Electoral College) are elected on Tuesday after the first Monday, in November of every leap year. These electors meet in the capital of each state, on the first Monday after the second Wednesday in December. They record their votes for their presidential candidate. Then, each state sends a certificate of election to the chairman of the Senate. On 6 January, the Congress meets in a joint session and votes are counted. The candidate, securing absolute majority gets elected. The new president is sworn into his office on 20 January. In case, no candidate secures an absolute majority of votes, then the House of Representatives is authorized to elect one among the top three candidates, who have secured the highest number of votes. If this method does not succeed, then after 4 March the vice-president will automatically succeed to the presidential office.

Qualification for US Presidency

The US Constitution states that a candidate for presidency should have the following qualifications:

- He should be a natural born citizen of the US.
- He must be at least 35 years of age.
- He must be a resident of the US for 14 years.

Term of Presidency

The US President is elected for a term of four years. He can be re-elected for another term and according to the convention, no president can contest an election for a third term. Earlier, George Washington, the first President of US, was elected twice. He refused to contest election the third time, though there was no restriction on re-election in the Constitution at that time. After this incident, it became a

convention, but this convention was broken during World War II when President Roosevelt was elected four times. His fourth term was in 1944. However, the 22nd Amendment of the Constitution (1952) fixed the total term for any president at ten years. Normally, a candidate cannot be re-elected for the third time. In case a candidate (vice-president) has succeeded a president after two or more years of his term, the vice-president succeeding him will have two chances to contest election. In any case, the term should not exceed ten years.

Succession to Presidency

The Constitution has no say on the issue of succession to presidency, in case the office falls empty due to death or resignation of the president and the vice-president. In 1947, an act that was passed says that under such circumstances, the succession after the vice-president would be in the following order: (i) The speaker of the House of Representatives(ii) The president pro-tempore (for the time being) of the Senate(iii) The secretary of the state followed by other members of the cabinet.

In case the office of the president falls vacant due to his incapacity or disability, either the president should have given in writing that he is incapable of managing the office or the vice-president, and the majority of heads of executive departments should have sufficient reasons to believe that the president is disabled to discharge his duties. This declaration should be sent to the Congress to that effect.

Removal of the President

The president of the US can be removed only by way of impeachment on the ground of gross misconduct or high crimes. Impeachment is not a very easy task. The Lower House frames the charges and the Senate acts as judicial tribunal for impeachment. Its meetings are presided over by the Chief Justice of the Supreme Court. The penalty cannot be more than the removal of the president from office, and his disqualification from holding any office of trust and responsibility under the American government.

Immunities

In the US, the president cannot be arrested for any offence, and he cannot be summoned before any court of law. He loses all immunities only when he is impeached.

Powers and Functions of the President

The president of the US is the most powerful authority. He commands high respect and backing in the country. The Constitution has given limited powers to the president, but in due course of time, due to several factors, this office assumed boundless powers in all areas of administration. The President enjoys enormous

executive, legislative, financial and judicial powers, which can be discussed as follows:

(I) Executive powers

Some of the executive powers of the president, as per the Constitution, by interpretation of the Supreme Court and by customs and conventions, can be summed up as follows:

- **Chief administrator:** The president is the chief administrative head of the nation. All administrative functions are carried out in his name. He is responsible for implementing the federal laws in the country. He has to ensure that the laws of the Constitution and the decisions of the courts are enforced and implemented. He must see to it that the Constitution, life and property of the people of US are protected. He executes treaties with the consent of the Senate and agreements with other countries, and protects the country from foreign invasion.

  He is also responsible for maintaining peace and order on the domestic front. In case there is a breakdown in the governmental machinery in any state, he can act on his initiative and restore peace and harmony. In the discharge of all these enormous responsibilities, he can make use of all defence forces, civil services, police, etc. For example, John F. Kennedy sent federal troops into the University of Mississippi in 1962 to prevent non-compliance with the order of a federal court, on reconciliation of Afro-American students.

- **Commander-in-chief:** The president is the supreme commander-in-chief of the armed forces of US. He is responsible for the defence of the country. He appoints high officials of the army with the support of the Senate. He can also remove them at will. He cannot declare war because this power resides in the hands of the Congress, but he can create a situation with his administrative insight, where the declaration of war becomes inevitable.

  Once war is declared, the military powers of the president increase tremendously. He is given a blank cheque to look after the military operations. Many times, presidents have taken advantage of this power and involved US troops in undeclared wars with other countries.

(II) Delegated legislation

As it is, the President is constitutionally very powerful. He has legislative authority in the form of executive orders. He can make many rules through executive orders. Many presidents have made widespread use of this authority. In addition to this, the recent entry of delegated legislation has empowered the president absolutely. Delegated legislation is when the Congress makes laws in a skeletal form, creates a general outline and leaves the details to be filled in by the executive.

(III) Financial powers

The Congress is the custodian of the nation's finances. Nevertheless, the President also plays a central role in the financial matters of the country. The budget is prepared under his supervision and directions by the Bureau of Budget. High-level technicalities are applied by the Bureau while preparing the budget. Later, the budget is presented before the Congress, which has the power to amend the budget, but normally they avoid disturbing the budget with amendments because of the technicalities involved. Another reason for avoiding amendments is that the Congress lacks any skilled person who can set the disturbed budget right. Therefore, the budget is passed as it is presented.

(IV) Power of patronage

The president has huge powers of patronage. He appoints a large number of federal officers in superior and inferior services. The senators and the representatives would always prefer to be in the good books of the president.

Limitations of the President

It should not be assumed that the powers of the president are limitless. Certain limitations are placed on his powers. This is explained as follows:

(A) Limitations on the powers of the President

The vast powers and liberties have made presidency in America quite magnificent, and it looks as if the president can easily become a dictator at any time, but the situation is not so. The fathers of the Constitution adopted the doctrine of separation of powers while framing the Constitution. Hence, there are lots of checks on the powers of the president to balance the situation. Some limitations of his executive powers are as follows:

(I) **Harmonious working is difficult:** The President of America does not have the power to initiate a bill or participate in the deliberation of a bill in the legislature. The ideology of separation of powers has kept the executive and legislature in separate impermeable compartments.

(II) **Difficulty in executing his policies due to dependence on the Congress:** The Congress is the only law-making body, and the President has to depend on it for conductive laws to be passed. At times, he is helpless as the Congress may not pass the necessary legislation for the smooth running of his administration. Therefore, he has to struggle a lot and alternate to other areas of power to get things done. Furthermore, he depends on the Congress for finances. It is the Congress, which is the custodian of the national revenue. Though the budget is prepared under the supervision of the president, the Congress has the power to bring changes in the budget and the president has to accept it.

(III) **Senatorial approval:** Senatorial approval is a big obstacle in the president's administration. The Constitution has provided that all federal appointments

made by him are to be ratified by the Senate. Here also, the president does not have exclusive powers. He is under the check of the senatorial courtesy.

(IV) **His veto can be nullified by the Congress:** The president's veto can be nullified by the Congress in the following conditions:

i. The president can use his veto power against a bill that is sent by the Congress. He can veto a bill within ten days and send it back to the Congress. However, if the vetoed bill is resent with two-third majority, then the President has to approve it.

ii. When the Congress is in session and the President does not send the approved bill back to the Congress in ten days, the bill is considered to be passed without his signature.

iii. The president has the power for pocket veto. Even here, the Congress has more power. It will not send any important bill to the President for his signature during the last ten days of the session, and the president gets the disadvantage of using pocket veto in these situations.

(B) Limitations of holding an elected office

The President of America is not an inherited authority; he is elected by the people because of his good qualities. He has to follow democratic values and sustain his image to return in the second term.

(I) **Limited tenure:** The president is elected for a short term of four years or at the most, for one more term. He cannot contest election for the third term. Due to this limitation, he cannot execute a long-term programme, which according to him will be good for the nation.

(II) **Constitutional limitations:** The president has to act within the structure of the Constitution, which also puts limits on his free exercise of powers.

2.3 AMERICAN CIVIL SERVICE

The United States federal civil service comprises the civilian workforce of the US federal government's departments and agencies. Established in 1871, the federal civil service includes employees in the department and agencies in the three branches of government, namely, the executive branch, legislative branch and the judicial branch. As of December 2011, there were approximately 2.79 million civil servants in the United States.

History

In the early 19th century, the position in the federal government was held at the pleasure of the incumbent president. This meant that the employees could be fired at any time and the jobs were used to support political parties. Following the Pendleton Civil Service Reform Act of 1883, the spoils system was gradually removed. By 1909, at least two-thirds of the US federal workforce were hired on

merit and were based on tests. Some of the senior civil service positions were filled by political appointees. Under the Hatch Act of 1939, civil servants were barred from engaging in political activities, while they were performing their duties. In certain cases, the outgoing administration ensures that its political appointees are given civil service protection so that they are not fired by the new administration. This is also known as burrowing.

U.S. Civil Service Commission

The United States Civil Service Commission was established by the Pendleton Civil Service Reform Act. The Act became a law on 16 January, 1883. The law mandated the employment of federal government employees on the basis of competitive tests and merit. It also barred elected officials and political appointees from firing civil servants. Therefore, civil servants were rendered free from the influence of the politicians. However, this law did not apply to state and municipal governments. The United States Civil Service Commission was renamed as the Office of Personnel Management under the provisions of Reorganization Plan No. 2 of 1978 and the Civil Service Reform Act of 1978. Today, U.S.A. has well-organised civil services at the Federal, state and local levels of the administration.

Civil Service Reform Act of 1978

The Civil Service Reform Act abolished the United States Civil Service Commission and created U.S. Office of Personnel Management (OPM), the Federal Labor Relations Authority (FLRA) and the U.S. Merit Systems Protection Board (MSPB). The OPM gives management guidance to several agencies of the executive branch and issues regulations that control federal human resources. On the other hand, the FLRA oversees the rights of federal employees, forms collective bargaining units and engages in collective bargaining with agencies. MSPB conducts studies of the federal civil service and primarily hears the appeals of federal employees who are disciplined or otherwise separated from their positions. This act was an effort to replace incompetent officials.

Check Your Progress

1. When does the swearing-in ceremony held for the president of the United States?
2. What are the qualifications required for a presidential candidate in the US?
3. Under what conditions can the president of the United States be impeached?
4. What are the powers of the President as the commander-in-chief of the armed forces?
5. When was the United States federal civil service established?
6. What is burrowing?

2.4 ANSWERS TO CHECK YOUR PROGRESS QUESTIONS

NOTES

1. The new president is sworn into his office on 20 January.
2. The US Constitution states that a candidate for presidency should have the following qualifications:
   - He should be a natural born citizen of the US.
   - He must be at least 35 years of age.
   - He must be a resident of the US for 14 years.
3. The president of the US can be removed only by way of impeachment on the ground of gross misconduct or high crimes.
4. The President is supreme commander-in-chief of the armed forces of US. He is responsible for the defence of the country. He appoints high officials of the army with the support of the Senate. He can also remove them at will. If a war is declared, the military powers of the president increase tremendously. He is given a blank cheque to look after the military operations.
5. The United States federal civil service was established in 1871.
6. In certain cases, the outgoing administration ensures that its political appointees are given civil service protection so that they are not fired by the new administration. This is also known as burrowing.

2.5 SUMMARY

- The US Constitution has bestowed all executive powers in the hands of the president. The president is the Chief Executive Head of the state in the US.
- The president is indirectly elected by an electoral college of each state. Each state elects the electors who are equal to the number of senators and representatives in the Congress, from the state concerned. They meet in each state, and cast their votes on the day fixed for presidential election. The election of the President of America goes by the calendar.
- The US President is elected for a term of four years. He can be re-elected for another term and according to the convention, no president can contest an election for a third term.
- In case the office falls empty due to death or resignation of the president and the vice-president, the succession after the vice-president would be in the following order:(i) The speaker of the House of Representatives(ii) The president pro-tempore (for the time being) of the Senate(iii) The secretary of the state followed by other members of the cabinet.

- The president of the US can be removed only by way of impeachment on the ground of gross misconduct or high crimes.
- As far as the executive powers are concerned, the President is the chief administrative head of the nation. All administrative functions are carried out in his name. He is also supreme commander-in-chief of the armed forces of US. He is responsible for the defence of the country.
- The President has legislative authority in the form of executive orders. In addition to this, the recent entry of delegated legislation has empowered the president absolutely. Delegated legislation is when the Congress makes laws in a skeletal form, creates a general outline and leaves the details to be filled in by the executive.
- The President also plays a central role in the financial matters of the country.
- The president has huge powers of patronage. He appoints a large number of federal officers in superior and inferior services. The senators and the representatives would always prefer to be in the good books of the president.
- Certain limitations are also placed on the powers of the president. President of America does not have the power to initiate a bill or participate in the deliberation of a bill in the legislature. The Congress is the only law-making body, and the President has to depend on it for conductive laws to be passed. At times, he is helpless as the Congress may not pass the necessary legislation for the smooth running of his administration. Senatorial approval is also a big obstacle in the president's administration.
- The United States federal civil service comprises the civilian workforce of the US federal government's departments and agencies. Established in 1871, the federal civil service includes employees in the department and agencies in the three branches of government, namely, the executive branch, legislative branch and the judicial branch.
- The United States Civil Service Commission was established by the Pendleton Civil Service Reform Act. The Act became a law on 16 January, 1883. The law mandated the employment of federal government employees on the basis of competitive tests and merit. It also barred elected officials and political appointees from firing civil servants.
- The United States Civil Service Commission was renamed as the Office of Personnel Management under the provisions of Reorganization Plan No. 2 of 1978 and the Civil Service Reform Act of 1978.
- The Civil Service Reform Act abolished the United States Civil Service Commission and created U.S. Office of Personnel Management (OPM), the Federal Labor Relations Authority (FLRA) and the U.S. Merit Systems Protection Board (MSPB).

NOTES

2.6 KEY WORDS

- **Impeachment:** Impeachment is the process by which a legislative body levels charges against a government official.
- **Senate:** The United States Senate is part of the United States Congress, which is a small group of elected people who decide the laws of the country.
- **The Civil Service Reform Act:** This act abolished the United States Civil Service Commission and created U.S. Office of Personnel Management (OPM), the Federal Labor Relations Authority (FLRA) and the U.S. Merit Systems Protection Board (MSPB).

2.7 SELF ASSESSMENT QUESTIONS AND EXERCISES

Short-Answer Questions

1. Write a short note on the election of the president in the US.
2. What are the executive powers of the president?
3. What are the financial powers of the president?
4. Write a short note on the United States Civil Service Commission.

Long-Answer Questions

1. Discuss the term and removal of the President in the US.
2. Examine the powers and responsibility of the US President.
3. Analyse the limitations of the powers of the president.

2.8 FURTHER READINGS

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BLOCK - II
ADMINISTRATIVE SYSTEM OF BRITAIN

NOTES

UNIT 3 OVERVIEW OF ADMINISTRATIVE SYSTEM OF BRITAIN

Structure

3.0 Introduction
3.1 Objectives
3.2 The British Constitution
3.3 British Government: Parliament
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3.7 Answers to Check Your Progress Questions
3.8 Summary
3.9 Key Words
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3.0 INTRODUCTION

In this unit, you will learn about the features of the British Constitution. The British political system is a unique blend of monarchy, aristocracy and democracy, and the unit will delve into all these three elements to gain an understanding of the administrative system of Britain. The powers and functions of the Crown, the British parliament and the Prime Minister will also be discussed in detail.

3.1 OBJECTIVES

After going through this unit, you will be able to:

- Examine the features of the British Constitution
- Explain the powers of the British Crown
- Discuss the powers and functions of the British Parliament
- Analyse the powers of the Cabinet and the Prime Minister

3.2 THE BRITISH CONSTITUTION

NOTES

The following are the salient features of the British Constitution:

1. Unwritten Constitution

Unlike the Indian Constitution, the British Constitution is unwritten. The French writer De Tocqueville once remarked that 'England has no constitution.' The British constitution is a mixture of charters, statutes, judicial decisions, common law, usages or traditions, customs, conventions, precedents etc. The first constitutional document was the Magna Carta of 1215, then came the Bill of Rights 1689, then the Parliament Acts of 1911, 1949, etc. The British constitution was not framed at a single time. It is still in the process of growth.

2. Evolutionary Con stitution

The British Constitution has developed through a process of gradual evolution. It is still going through the process of growth. It was not framed by a person or a king for his own advantage. The British people have developed their constitution from precedent to precedent and from past experience of law and practice.

3. Flexible Constitution

One of the most important features of the British Constitution is its flexibility. This means that it can be amended by the Parliament. In England there is no difference between the ordinary law and constitutional law. The British Constitution is different from that of America's or Pakistan's. In America or Pakistan, the constitution is considered to be a supreme document in which amendment is very rare. The England's constitution is always under the process of growth.

4. Unitary Constitution

England's constitution is a unitary constitution. All the powers of the state are concentrated in the hands of a single government for the whole country. All the local governments are the servants of the central authority which has created them and can dissolve them also.

5. Unreality

One of the unique features of the British Constitution is what is called its unreality. There is a great difference in its appearance and its reality. In other words, there is a great divergence in its theory. It is an absolute monarchy while in reality it is a democratic state ruled by a parliament elected by the people.

6. Parliament's Sovereignty

In Britain, like in India, the Parliament is sovereign. The sovereignty of the Parliament is a source of the Constitution's flexibility.

7. Party System

Like India, the British political system is a party system that has been working successfully largely due to the existence of two major parties. These parties are Labour Party and the Conservative Party. However, recently the Liberal Democrats have also been making inroads. The existence of two major parties throughout its history has contributed to the strengthening of political traditions in Britain.

9. Nature of Conventions

Another very important feature of the British Constitution is the existence of a large number of conventions in it. No one can understand this constitution properly without studying these conventions carefully. These are a part of the constitution but they are not laws, because as such these conventions cannot be enforced by the courts. They are well known to all those who run the government.

Examples of the conventions:

- The Prime Minister must sit in the House of Commons
- Parliament must meet at least once in a year

10. Independence of Judiciary

The British Constitution is based on the principle of the Independence of the judiciary. Since the year 1700 this principle has been a fundamental principle of the English Constitution. Although the judiciary is no doubt independent in Britain but the right of judicial review is not granted.

11. Bicameral Legislature

Like in India, according to the British Constitution, the British Parliament consists of two houses: the House of Commons (Lower House) and the House of Lords (Upper House).

12. Blend of Monarchy, Aristocracy and Democracy

The British Constitution is a unique blend of monarchy, aristocracy and democracy. It is a Monarchic due to the existence of the Queen and King. It is aristocratic because of the House of Lords. It is Democratic because Britain is a democratic state run by a Parliament elected by the people.

Sources of the British Constitution

The sources of the British constitution can be divided into two parts:

- The laws of the constitution
- The conventions of the constitution

NOTES

(A) The Laws of the Constitution

The laws of the constitution are based on written documents. These include historic documents, acts of the parliament, judicial decisions and common laws.

1. **Historic Constitutional Documents:** The historic constitutional documents form a very important source of the British constitution. The importance of these documents can be judged from the fact that the transition process from absolute monarchy to constitutional government in Britain was triggered by these elements. e.g.:

- **Magna Carta (1215):** The charter Magna Carta required the then monarch of England, King of John of England to proclaim certain liberties and accept that his will was not arbitrary—for example by explicitly accepting that no freeman could be punished except through the law of the land, a right that still exists.
- **The Petition of Rights (1628):** It is a document that sets out specific liberties of the subject that the king is prohibited from infringing.
- **The Bill of Rights (1689):** It is an act of the Parliament that laid down limits on the powers of the crown and sets out the rights of Parliament and rules for freedom of speech in Parliament, the requirement to regular elections to Parliament and the right to petition the monarch without fear of retribution.

2. **Acts of the Parliament**: The laws made by the parliament from time to time have also contributed and furthered the transition to constitutional government in Britain. e.g.

- The Act of Habeas Corpus (1679)
- The Act of Settlement (1701)
- Reform acts of (1832,1867,1884,1918,1928)
- Acts of parliament (1911, 1949)

3. **Judicial Decisions**: These are also important sources of the British constitution. Judicial decisions explain and interpret the rules and statutes passed by the parliament.

4. **Common Law:** Common laws are also a very important source of British constitution. Especially relating to the liberty of the subjects, i.e., many basic rights of the people e.g. jury trial, freedom of speech and assembly are based on common law as practiced by various courts in the country.

(B) The Conventions of the Constitution

The conventions are not recognized or enforced by any court. These are highly respected by the British electorate and leadership. The conventions of the British constitution are actually of an unwritten character. They form an important part of the constitution. They are important because they have enabled the British political

system to adopt itself to the changing needs of the time. Some of these conventions are:

1. The British monarch cannot veto the bills passed by the parliament.
2. The sovereign invites the leader of the majority party in the House of Commons to form the cabinet.
3. The Prime Minister and Finance Minister are both from the House of Commons
4. The money bills originate in the House of Commons.
5. The cabinet remains in power as long as it enjoys the confidence of the majority party in the House of Commons, otherwise it has to resign.
6. All the civil servants are tried in the same court like any other citizen.

NOTES

Sanctions behind the Conventions

The conventions are not enforced by the courts, then the questions arises, why do the people obey them? These are the sanctions behind the conventions:

- Force of law
- Respect for conventions
- Public opinion

A. Force of Law

According to Dicey, the conventions are observed because they are based on and sanctioned by law. The power behind them is the power of law. If, says Dicey, the conventions are not observed, it will almost immediately bring the offenders into conflict with the courts and the law of land. Dicey gives the following example: As the parliament has to meet at least in a year, suppose if the Prime Minister does not summon the parliament for two years, then no budget will be passed and no taxes will be collected. Therefore, although it is a convention but now it has the force of law behind it. Hence disregarding it will force the public official to commit illegal acts.

B. Respect for Conventions

Lowell says that conventions are observed because they are a code of honour. They are the rules of game and the single class, which has hitherto had the conduct of the English Public life almost entirely in its own hands, is the one which is peculiarly sensitive to such conventions. Thus, the respect for the conventions by the ruling class of Britain is the force behind them.

C. Public Opinion

Ogg says that the force behind the conventions is the force of the public opinion. The public wants their observance and it will not tolerate their violation e.g. public

expects a cabinet defeated in the parliament to leave office when it has lost the confidence in the parliament. Dr. Jennings says that the force behind the conventions is the same as behind the law.

NOTES

Check Your Progress

1. List two features of the British Constitution.
2. Why is the British Constitution considered a blend of aristocracy, monarchy and democracy?
3. State any two conventions of the British Constitution.

3.3 BRITISH GOVERNMENT: PARLIAMENT

The British Parliament is the oldest legislative institution in the world. It is one of the best representative assemblies of the world. It still upholds the theory of the supremacy of ballot. This Parliament meets in the Palace of Westminster. Incidentally, the parliamentary form of government of England is the oldest in the world.

Origin and Growth of Parliament

Etymologically, the word 'parliament' has been derived from the Latin word *parle*, which means consultation. In the beginning, the British monarch, who was the embodiment of the legislative, executive and judicial powers, found it convenient to consult with the Lords, Barons and the Commons for raising money. Its root can be traced to the *Magnum Concilium* (Great Council) of the Norman period. Simon de Montford first used the word 'parliament' in 1265, and Edward I summoned the famous 'Model Parliament' in 1295.

Bicameralism is an accident in British constitutional history, for in the 'Model Parliament' of 1295, the Barons and clergy refused to sit with the common people. Hence, two houses were created: the House of Lords and the House of Commons. Initially, the House of Lords was more powerful, but with the extension of franchise which started with the passage of the first Reform Act of 1832, the House of Commons became a popular and powerful chamber. During the period of 1832–1971, there were several Reforms Acts which gradually granted every person of eighteen years in age the right to vote, thus completing the process of democratization of Parliament.

Powers and Functions of Parliament

The Parliament is a sovereign body. It has the right to make or unmake any law, and the judiciary has no right to override or set aside its act. The Parliament in general enjoys the following powers:

(i) Law-making powers

The Great Britain has a unitary form of government, and hence, both Houses of Parliament have the power to make law for the whole country. It is the principal function of the Parliament. In actual practice, it has neither time nor competence and hence the initiative is left in the hands of the cabinet. The cabinet dominates both in legislative as well as in executive fields. Further, in the legislative sphere, the House of Commons has more powers than the House of Lords.

(ii) Financial power

The Parliament is the guardian of national finance. It may be pointed out here that it was largely on the question of money that the battle was fought between the King and Parliament. Finally, it was settled that Parliament has the supreme authority in the financial field. Here, the House of Commons is more powerful, and as per the provision of the Parliament Act 1911, the House of Lords can delay money bills for a maximum period of one month. Money bills can be first introduced only in the House of Commons.

(iii) Control over the executive

The responsibility of the executive to the legislature is the very basis of the parliamentary form of government. The cabinet in England is responsible to the Parliament. Here again, it is the House of Commons, and not the House of Lords that exercises effective control. The House of Commons may remove a cabinet out of power by a vote of no confidence. It may reject a bill or a budget proposal of the cabinet. Its members have a right to ask questions to the ministers. They move the vote of no confidence or vote of censure against the government.

(iv) Ventilation of grievances

The Parliament is a forum for deliberation on questions of public importance and the ventilation of public grievances. It is the mirror of the nation. Whatever happens in the various parts of the country can be discussed in it. That is why it is often described as 'a nation in miniature'.

(v) Educative functions

Besides the function of exercising control over the executive, the Parliament also performs educative functions. Its debates provide valuable political education to the people and create a process of awareness among them. Newspapers, radio and televisions give maximum publicity to its debates. It helps to educate and formulate public opinion in the Great Britain. It provides an opportunity to the opposition to criticize the government.

(vi) Miscellaneous functions

The Parliament protects the rights and privileges of its members. It provides a training ground for the future parliamentary leaders and ministers. Its members,

particularly the members of the House of Commons, have to demonstrate talent, ability, wisdom and practical statesmanship.

Bicameralism and the Parliament

The Parliament of Great Britain is bicameral in structure. It consists of the following two houses:

- House of Commons
- House of Lords

The House of Commons is the popular chamber whose members are elected directly by the people. It has been aptly described as the 'most characteristic institution of British democracy'. It consists of elected representatives of the people who represent the nation as a whole. The House of Commons is now purely an elective body, and it has attained its present status through a long process of democratization. Free election is now an essential basis of the British democracy. The House of Commons at present consists of 635 members. These members are elected for a period of five years from single member constituencies, arranged on a geographical basis. If the House is dissolved earlier, there may be fresh election before the completion of the terms. The tenure of the House normally does not extend beyond five years, but it can be extended in great national crisis such as wars and emergencies. The House of Commons elected in 1910 continued to work till 1918 due to First World War, and one elected in 1935 continued till 1945 during Second World War.

The House of Lords is the oldest upper House in the world. As a second chamber, it has been in continuous existence for more than one thousand years. This House consists of more than one thousand Peers of Lords. The term 'peer' means an equal, and originally, it referred to the feudal tenants-in-chief of the monarch. These tenants in chief more or less enjoyed equal privileges, and they were summoned by the King to be present when a new Parliament met. It became customary that when a new Parliament met, the King used to summon the same old peers who had sat in an earlier one, or if in the meantime, they had died, for their eldest sons. Thus, peer ship became hereditary under the law of primogeniture, where the eldest son had the right to inherit the father's legacy, and become a member of the House of Lords.

At present, the House of Lords consists of the following categories of peers:

- Princes of the Royal Blood
- Hereditary Peers
- Representative Peer of Scotland
- Representative Peers of Ireland
- Lords of Appeal

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- Lords of Spiritual
- Life Peers

The members of the House of Lords have certain privileges and disabilities. They enjoy freedom of speech and individually meet the monarch to discuss public affairs. They are exempted from arrest when the House of Lords is in session. Eminent persons are conferred on peerage so that the country gets the chance of getting their services.

Check Your Progress

4. Name the two houses in the British Parliament.
5. How many members are currently there in the House of Commons?

3.4 BRITISH CROWN

Although British society has had continuous debates about the status of the King and the Crown and whether distinctions between the two are wholly relevant in the twenty first century, the political economy of Britain continues to distinguish between the two. Simply put, the Crown is the institution while the King (or the Queen) is an individual who is considered the physical manifestation of that institution. The maxim 'The King is dead, long live the King,' aptly sums up the distinction. It expresses the fact that even though the person holding the position of the king is dead, the office continues to exist.

The Crown, according to Mr. Sidney Low, is 'a convenient working hypothesis'. According to Sir Maurice Amos, 'The Crown is a bundle of sovereign powers, prerogatives and rights - a legal idea.' Thus, the rights and powers of the Crown are historically the rights and powers of the King or the Queen. This is still the case in theory, but in reality, the King is merely a nominal head, i.e., ministers exercise these powers on his behalf and in the king's name. These ministers are authorized by the Parliament, and are responsible to it. According to Dr. Finer, 'When we talk of the actions of the Crown in politics we mean that the People, Parliament and the Cabinet have supplied the motive power through the formal arrangements established by centuries of constitutional development. The Crown is an ornamental cap over all these effective centres of political energy.' The author of *England in the Reign of Charles II* David Ogg states that the Crown is a 'subtle combination of sovereign ministers (especially Cabinet members), and to a degree Parliament.' Thus, it can be stated that the king is the physical embodiment of the crown, whereas the Cabinet is its visible embodiment.

NOTES

Powers of the British Monarchy

The powers of the British Monarch comes from the following sources:

(i) prerogative

(ii) statute

In earlier times, powers of the British monarch were considered to be 'prerogatives' and were not conferred to him or her by an act of Parliament. However, with time, the parliament began cutting away at the powers of the monarch. Today, whatever powers that remain with the monarch constitute the prerogatives of the Crown.

According to the constitutional theorist A.V. Dicey, prerogatives are the remnants of autocratic and discretionary powers legally remaining with the Crown. They mean powers that are not granted, but are possessed or conferred powers that have been acquired because they were prescribed, and confirmed by usage and accepted. The second source of power of the Crown comes from Acts of Parliament. The British Parliament may have reduced the powers of the monarch over the years, but it has also added to them. To give an example, whenever the Parliament authorizes a new tax, or introduces fresh duties of administration upon the Crown, it begins to expand the powers of the Crown in an imperceptible manner. However, whether a given power is derived from prerogative or statute is not important. What is really important is that the powers of the Crown keep changing off and on. Sometimes they are curtailed and sometimes they are allowed to reach new heights.

The powers of the Crown can be classified under the following heads:

- Executive Powers
- Legislative Powers

Executive Powers

The executive powers of the Crown are as follows:

- The power to appoint all judges, military men, administrative and executive officers.
- The power to supervise administrative functions and work
- The power to enforce national laws
- The authority to control the armed forces
- The right to represent the nation in foreign countries
- The right to wield the power of pardon and reprieve

Along with this, the Crown also has the powers to go to war or make peace or sign treaties with foreign countries without consulting the Parliament. However, this executive power in reality is exercised by the ministers of British government,

or the cabinet. The cabinet and ministers also have the responsibility of administration of the country. They also appoint the members to the office and direct the British foreign policy as well as decide on expenses made by the Parliament. Thus, in Britain, real power is wielded not by the King, but by ministers and the Cabinet.

The powers that are conferred on the Crown by Parliament are actually delegated to the Cabinet. As the monarch is only a nominal head, as an individual the King is not granted any authority by the Parliament. The prerogative of mercy is primarily exercised by the Home Secretary. There is only a formal contribution by the royalty. Even when the King bestows honours on the public or his subjects, he is doing so with prior permissions from his ministers. It is the Prime Minister, and not the King, who is responsible to the Parliament for including or excluding items/names from the list of honours.

Legislative Powers

Along with executive powers, the Crown also has legislative powers. In theory, laws of the British Parliament are passed with the King acting in consultation/ tandem with the House of Lords and the House of Commons. However, just like the executive powers, the legislative powers of the monarch are nominal and in actuality rest with the Crown. In theory, the King does the following:

- Summons and prorogues the sessions of the Parliament
- Dissolves the House of Commons
- Gives his assent to the bills passed by the Parliament
- Issues Orders-in-Council

Although a Bill cannot become an Act until and unless the monarch gives his or her assent, however, no monarch can exercise veto on his own when a bill is passed by Parliament. The monarch can only exercise veto if the Cabinet advises him to do so. Therefore, it would not be wrong to say the Cabinet is the institution exercising all these powers.

Reasons for the Survival of Monarchy in Britain

The following issues are debated regarding the existence of monarchy in Britain:

- The system of voting against the monarchy is yet to be followed in Britain, although the Parliament can vote for abolishing monarchy. According to the Treason Felony Act, 1848, it is treason if 'any person whatsoever, within the United Kingdom or without, compass, imagine, invent, devise, or intend to deprive or depose our most gracious Lady the Queen from the style, honour or Royal Name of the Imperial Crown of the United Kingdom.' Several monarchists are of the opinion that it is seditious and illegal to advocate republican democracy.

- The current framework of governance has existed in Britain since the 10th century. The system has changed now, even though the monarch still remains the Head of the State, and does not possess any political powers now. The current framework leaves the Prime Minister out of the useless events and has given him time to execute his duty of controlling the country well. Another reason for monarchy in Britain is that no one has been able to devise an alternative till now.

However, it is equally important to bring a change in the British society and make it seem like an influential and modern state.

The following are some suggested points against monarchy in Britain:

- A hereditary monarch in a developed nation cannot be justified because it represents the feudalism of the medieval English society. It seems like a superannuated system that has served its time and purpose. It encourages social division and snobbery by separating monarchy from the ordinary citizens. Monarchy stands in contrast to the system of meritocracy, where people are rewarded according to their abilities, and not on the basis of their birth. As long as the monarchy survives, the class system will also survive in Britain.
- The fact that monarchy is a mere ceremonial office supported by the money of the taxpayers is not justified. These funds can easily be used for the further development of the nation. They can be invested towards important sectors such as education, healthcare, infrastructure, transport and communications. It should be noted that public money (about £50,000) was once used for renovating the Buckingham Palace. Since the palace is a tourist attraction, abolishing monarchy would increase revenue from the same. Moreover, the palaces can be used as tourist spots rather than as a home for the royalty.
- Monarchy encourages the persistence of anachronous traditions and values. It not only paints the image of Britain as a country still stuck in the medievalism of the past, but is also the relic of an era gone by. Monarchy flourishes while the working class perishes.
- Monarchy is not regarded with the same degree of respect as in the past. It is often claimed to lack the sensibility to act as the head of state. Very few people are of the opinion that it should continue in its present form. The British citizens often face despondency when it comes to the question of the continuation of monarchy in Britain.

It is believed that monarchy is a style of governance where, by itself, it has no special role but many have to suffer because of its presence. To avoid this suffering of the innocent, it should be eradicated or at least reduced to some extent. Monarchy is a redundant framework, leading to no optimal positive results

and simultaneously leading to racism, which is its biggest drawback. Why does the system still prevail even after such criticism?

- The most common reason is that monarchy has not been practised in its true sense anymore. People do not perceive any direct adverse effect of monarchy in the state.
- Britain's sense of security has been embedded in the Crown only, and without it, things would not make much sense.
- Since the true sense has been lost, the behaviour of the Crown is considered irrelevant.
- Monarchy is constitutional. It renders Britain a unique and singular identity.
- The monarch is in a position in the state where he/she is able to work for the welfare of the civilians.
- Monarchy has no significance of its own.
- Any attempt to do away with the monarchy is a fundamental assault on the national way of life in Britain.

Check Your Progress

6. What are the sources of the power of the monarchy?
7. Mention any two executive powers of the Crown.

3.5 CABINET

The cabinet is 'the core of the British constitutional system'. It is the most important single piece of mechanism in the structure of the British Government. It is the supreme directing authority of the government and the real ruler of Great Britain. It has been described as the chief glory of the Constitution.

The entire cabinet system is a product of convention. Like its constitution, the cabinet has grown into its present form over the past three centuries or so and is largely a child of chance rather than that of wisdom. No one meticulously planned its development and yet it has grown.

The Ministers of Crown Act of 1931 legally recognized the institution of the cabinet. It is today an omnipotent body—an institution of expanding powers.

Cabinet and the Ministry

Sometimes, distinction is made between the cabinet and the ministry. The cabinet is only an inner circle of the ministry. A ministry is a large body consisting of all categories of the ministers who have seats in the parliament and are responsible to it. The cabinet, on the other hand, is a small body consisting of the most important ministers. In other words, all the members of the ministry are not the members of the cabinet.

There are ministers of different ranks, who vary in nomenclature and importance. First, there are some sixteen to twenty of the most important ministers, who are known as the cabinet ministers. They stand at the head of the executive and decide policies of the government. Second, there are certain ministers who are designated as the ministers of cabinet rank. These ministers are not the members of the cabinet, yet they are given the status of the cabinet ministers. They are the heads of administrative departments, and are invited to attend cabinet meetings when affairs of their respective departments are under consideration. The number of this category of ministers varies from government to government, and it is left to the Prime Minister's discretion to decide.

Third, there are ministers of states who act like deputy ministers. They may be appointed in those departments where the work is particularly heavy and involves frequent visits abroad. These ministers usually work under the cabinet ministers, and they enjoy a status in between a full minister and a parliamentary security.

Lastly, there are parliamentary secretaries or junior ministers appointed almost in each department. They are technically not the ministers of the Crown, because constitutionally, they do not enjoy powers. Their sole function is to help and relieve their senior ministers of some of their burdens by taking part in the parliamentary debates and answering parliamentary questions. They also assist their senior members in their departmental works. They are also known as parliamentary undersecretaries.

All the above categories of ministers constitute the ministry, and they are members of parliament and preferably belong to the majority party in the House of Commons.

The ministry may consist of about sixty to seventy members. It does not meet as a body for the transaction of business. It does not deliberate on matters of policy. The duties of a minister unless he is a cabinet minister, are departmental and individual confined to the respective departments. Policy formulation is the business of the cabinet. The cabinet meets in a body, but the ministry never meets does. The ministry is always a larger body, whereas the cabinet is only a smaller one. The latter is an inner circle within the bigger circle of the former.

Organization of the Cabinet

The first step in the formation of the cabinet is the selection of the prime minister. It is now a well-established convention that the prime minister must be the leader of the majority party in the parliament.

As there is a bi-party system, the choice of the prime minister is practically made by the electorate. From a legal point of view, the monarch has to select the leader of the majority party in the House of Commons as the prime minister. In the earlier days, the monarch was likely to exercise a real choice in the matter, but with the development of the bi-party system, he only invites the leader of the majority party in the House of Commons to be the prime minister. Once the prime

minister is appointed, all other ministers are appointed by the monarch on the advice of the prime minister. The prime minister has a free hand to form the ministry. Legally, he may not consult anyone, but practically, he consults some of his leading party colleagues and followers. He should include the senior members of his party in the Cabinet. He must see that various age groups and interests are represented.

Further, the members of the cabinet as well as the ministry must be taken from both the Houses of Parliament. However, the free hand of the prime minister's information of the cabinet cannot be denied.

It may be pointed here that the prime minister is legally under no obligation to include any particular person in his cabinet. But in practice, some members of his party have such status and prestige that their inclusion in the cabinet is most automatic. The prime minister has a right to reshuffle his cabinet, when he likes. There are no fixed rules regarding the size of the cabinet. No two cabinets either have the same size or consist of exactly the same ministers. As a general rule, the ministers in charge of important departments, such as the Chancellor of Exchequer, Lord Chancellor, the Secretary of State for Foreign affairs, the President of the Board of Trade, as well as the ministers of Defence, Labour and Agriculture, are invariably included in the Cabinet.

In addition to these, a number of other ministers are also included in the cabinet. The strength of the Cabinet varies, usually, from fifteen to twenty. It is alleged that a twenty-member cabinet is too large a body to make prompt and quick decisions. The idea of the war-cabinets during the last two world wars has substantiated the above argument. In both the World Wars, the Prime Ministers Lloyd George and Winston Churchill created the war-cabinet consisting of five ministers. The five member war-cabinet was not merely, a committee of the cabinet, but the final authority regarding the prosecution of the wars.

The idea of an inner-cabinet as a prototype of the war-cabinet was first proposed in the report of the Haldane Committee on the Machinery of Government. It would consist of a few members, four or five, and act like a central nucleus within the Cabinet structure. The inner cabinet is only an informal institution. It neither supersedes the war-cabinet nor is responsible for any policy. It is more an advisory body than a policy-making organ.

Features of the Cabinet System

The cabinet system in Great Britain is based on certain recognized principles. The principles have been developed in course of time, and these are based more on conventions than on law. The essential features of the cabinet system are discussed as follows:

(i) Exclusion of the Monarch from the cabinet

The Monarch does not attend the meeting of the cabinet. He is neutral, and should not be involved in political matters. Although all executive actions are taken in the

name of the Monarch, he practically does nothing. The decisions are taken by the cabinet, and the Monarch acts on its advice.

(ii) Combination of the executive and legislative functions

The second essential feature of cabinet system is the close cooperation between the executive and the legislature. All ministers are the members of parliament. The Prime Minister and the members of the cabinet belong to the majority party. As Heads of the Departments, the members of the cabinet control the executive and as leaders of the majority party, they also control the Parliament. There is absence of strict separation of powers in a cabinet form of government.

(iii) Collective responsibility

The collective responsibility of the cabinet is enforced in the Parliament through various methods like the vote of no-confidence, vote of censure and refusal to pass government bills. Whenever the cabinet ceases to enjoy the confidence of the House of Commons, it may resign or advise for the dissolution of the House of Commons. In case of dissolution of the House of Commons, a fresh election takes place. Thus, the collective responsibility has strengthened the solidarity of the cabinet in the British constitutional system.

(iv) Ministerial responsibility

The British cabinet system is also based on the principle of the ministerial responsibility. A minister is responsible to the House of Commons for his acts of omission and commission. Every act of the Crown is countersigned by at least one minister, who can be held responsible in a court of law, if the act done is illegal.

(v) Political homogeneity

The members of the Cabinet are preferably drawn from the same political party. The ministers belonging to the same political party hold similar views. The cabinet consisting of like-minded persons with similar objectives can work efficiently with more vigour and greater determination. Coalition ministry is also a rare phenomenon in the British constitutional system.

(vi) Leadership of the prime minister

Although the members of the cabinet stand on an equal footing, yet the prime minister is the captain of the team. Other members are appointed on his recommendation and he can reshuffle his team any time. He is the recognized leader of the party, and coordinates and supervises the work of various departments in the government. His resignation means the resignation of the entire cabinet as well as the ministry.

(vii) Secrecy of cabinet meetings

The members of the cabinet are expected to maintain complete secrecy with regard to the proceedings and policies of the cabinet. They take the oath of secrecy as per the Official Secrets Act. Legally, the decisions taken by the cabinet are in the nature of advice to the monarch and cannot be published without his permission. Although meetings of the cabinet may be held anywhere and at any time, they usually take place each Wednesday in the Cabinet room at 10, Downing Street. In extraordinary circumstances, there may be frequent meetings of the cabinet. The emergency meetings may be summoned at any time.

Functions of the Cabinet

The cabinet occupies the central place in the political field, and plays a dominant role in the governmental system. It has many functions and we may subdivide them for our convenience under the following headings:

(i) **It decides the national policy:** As the real executive, the cabinet defines the lines of the national policy, and decides how every current problem which may arise at home or abroad is to be treated.

(ii) **It is the principal custodian of executive powers:** The cabinet not only formulates and defines policies, it also executes them. It exercises the national executive power subject to the approval of the Parliament. All the ministers, whether they are members of the cabinet or not, have to execute the policies formulated by the cabinet and implement laws enacted by the Parliament.

The cabinet is also responsible for the appointment of high officers of the state. The King is a mere nominal executive head, whereas the ministers are the real executive heads. Thus, the Cabinet is held responsible for every detail of administrative work.

(iii) **It controls and guides the legislative work:** The cabinet guides and largely controls the functions of the Parliament. The ministers prepare, introduce and pilot legislative measures in the Parliament. They also explain and urge the members to pass the bills introduced by them. All bills introduced by the Cabinet are generally passed due to the support of the majority party in the Parliament. A bill opposed by the cabinet has no chance of becoming an act. In fact, the cabinet has become a miniature legislature and it is said that, today it is the cabinet that legislates with the advice and consent of the Parliament.

(iv) **It controls the national finance:** The cabinet is responsible for the entire expenditure of the nation. It decides as to what taxes will be levied and how these taxes will be collected. It finalizes the budget before it is introduced in the House of Commons. The Chancellor of Exchequer is an important member of the cabinet. He prepares the annual budget, and generally, the budget is discussed in the cabinet before its presentation in the Parliament.

The cabinet has a right to examine the pros and cons of various financial measures.

(v) **It coordinates the policies of various departments:** The government is divided into several departments and it cannot be a success unless all the departments work in harmony and cooperation. The proposals of various departments may be sometimes conflicting and contradictory. Hence, it is the responsibility of the cabinet to coordinate the policies of various departments. The cabinet has to prevent friction, overlapping and wastage in departmental policies and programmes.

3.6 THE PRIME MINISTER

The prime minister is by far the most important man in the country. He is also described as the master of the government. It is the peculiarity of the British Constitution that the man who holds such a high office has, strictly speaking, no legal sanction. The English law is very much silent with regard to the office of the prime minister.

Selection of the Prime Minister

The selection of the prime minister depends essentially on the monarch. During the18th century, the royal choice played an effective role in such election. It was a well established rule that the prime minister must be either a Lord or a member of the House of Commons. All prime ministers since Sir Robert Walpole have been appointed from one of the Houses.

A convention has been developed since 1923 that the prime minister should belong to the House of Commons. The resignation of Bonar Law in 1923 left the King to select either Lord Curzon or Stanley Baldwin as the prime minister. The former was a member of the House of Lords, and the latter belonged to the House of Commons. Lord Curzon had greater cabinet experience than Stanley Baldwin. But the King finally selected Baldwin as the prime minister after due consultation with the prominent members of the party. As the cabinet is responsible to the House of Commons and the House of Commons is more powerful than the House of Lords, it is natural to expect the leader of the majority party of the House of Commons to be appointed as the Prime Minister.

Functions of the Prime Minister

The functions of the prime minister are many and varied. He has immense powers and a considerable amount of prestige, which can be seen from the following description of his functions:

(i) Formation of the ministry

The prime minister forms the ministry. With the appointment of the prime minister, the essential function of the monarch is over, for it is left to the prime minister to

select his ministers, and present the list to the monarch. The prime minister has also to select his cabinet colleagues. The prime minister can change the members of the ministry at any time.

(ii) Distribution of portfolios

The distribution of portfolios is another important task of the prime minister. However, while distributing portfolios, he has to see that important members of the party do get important portfolios. He also has to satisfy the aspirants for the important portfolios.

(iii) The chairman of the Cabinet Committee

The prime minister is the Chairman of the Cabinet Committee. He convenes the meetings of the cabinet and presides over them. He is to fix the agenda of the meetings and it is for him to accept or reject proposals put by its members for discussion in such meetings. He may advice, warn or encourage the ministers in the discharge of their functions.

(iv) Leader of the House of Commons

It is now an established convention that the Prime Minister should belong to the House of Commons. He represents the cabinet as a whole and acts as the leader of the House. He announces the important policies of government and speaks on most important bills in the House of Commons. He is responsible for the arrangement of business of the House through the usual channels. The members of the House look to him as the fountain of every policy.

(v) Chief coordinator of policies

The prime minister is the chief coordinator of the policies of several ministries and departments. He has to see that the government works as an organic whole and activities of various departments do not overlap or conflict with one another. In case of a conflict between two or more departments, the prime minister acts as the mediator. He irons out conflicts among the various ministries and departments. Thus, he plays a major role in coordinating the policies of the government.

(vi) Sole adviser to the monarch

The prime minister is the sole adviser to the monarch. You must already know that he is the only channel of communication between the monarch and the cabinet. The prime minister advises the sovereign in matters of appointment and any other matter of national importance. He recommends the names of persons on whom honours can be conferred. He is also responsible for a wide variety of appointments, and exercises considerable patronage. He also has the power to advise the King to create peers. Thus, he has a legal right of access to the sovereign, which other Executive in UK 96 members of the cabinet ordinarily do not possess. For this reason, he frequently visits the Buckingham Palace to meet the monarch.

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(vii) Leader of the nation

The prime minister is not only the leader of the majority party but also the leader of the nation. A general election in England is in reality an election of the prime minister. He should feel the pulse of the people, and try to ascertain genuine public opinion on matters which confront the nation. His appeal to the people in critical periods saves the nation.

(viii) Power of dissolution

The prime minister possesses the supreme power of dissolution, and it is his sole right to advise the monarch to dissolve the House of Commons. In other words, the members of the House of Commons hold their seats at the mercy of the prime minister. It is difficult to imagine a situation in which the monarch can refuse dissolution to a prime minister. Nevertheless, the prime minister should consult the cabinet before advising for dissolution.

(ix) Other powers

The prime minister possesses wide powers of patronage, including the appointment and dismissal of ministers. A large number of important political, diplomatic, administrative, ecclesiastical and university appointments are made by the monarch, on his recommendations. He may occasionally attend international conferences. He meets the Commonwealth Prime Minister in regular conferences. He may meet the Heads of other Governments at the summit talks and discuss international problems. The prime minister often discharges these functions without consulting the cabinet. However, the solidarity of the cabinet and the prestige of the prime minister should be always reconciled.

Doctrine of the Prime Ministerial Government

In view of the vast powers exercised by the prime minister, some critics observed that there is prime ministerial form of government in England. R. H. S. Crossman writes, 'The post-war epoch has seen the final transformation of cabinet government into Prime Ministerial Government.' Under this system, the cabinet which is a 'hyphen which joins, the buckle which fastens, the legislative part of the State to the executive part' becomes one single man. Even in Bagehot's time, it was probably a misnomer to describe the Premier as Chairman, and *primus inter pares* (first among equals).

His right to select and remove his own cabinet, his power to decide its agenda, his right to announce its decisions and to advice the monarch for dissolution, his power to control the party members for the sake of discipline—all this has given him near presidential powers. Every cabinet minister has become, in fact, the prime minister's agent or his assistant. No minister can take an important move without consulting the prime minister. It may be said that the cabinet has become a Board of Directors and the prime minister is like a general manager or

a managing director. Important policy decisions are often taken by the prime minister alone, or after consulting one or two cabinet ministers. The repeal of the Corn Laws in 1846 was done by the personal initiative of Robert Peel. The invasion of the Suez Canal in1956 was decided by Anthony Eden in consultation with his few colleagues, and the cabinet was informed at the last moment before Israel attacked Egypt. Harold Wilson reached the final decision to dissolve the House of Commons in 1966without consulting the cabinet. Once the prime minister announces his policy or takes a step, his followers have little chance to oppose him, for it may endanger party solidarity and stability of government.

Herbert Morrison and some other critics refute the thesis of the establishment of prime ministerial government in England. They hold the view that 'the Cabinet is supreme' and the prime minister is not the master of the cabinet. He cannot ride roughshod over the desire of the cabinet. As the captain, he must carry the whole team with him. A team is weak without a captain, and there can be no captain without a team. Both should work in mutual cooperation and perfect harmony. Hence, the prime minister is like an executive chairman. The preceding two views seem to be extreme ones, and the real truth lies in between these two views. The prime ministerial powers change with political circumstances and with the concerned personalities. The prime minister is, no doubt, more powerful than any cabinet minister. But it cannot be said that he is more powerful than the whole cabinet. After all, he has to carry the whole cabinet with him.

Check Your Progress

8. What is the difference between cabinet and ministry?
9. List any two functions of the Prime Minister.

3.7 ANSWERS TO CHECK YOUR PROGRESS QUESTIONS

1. The two features of the British Constitution are given below:
    - Unlike the Indian Constitution, the British Constitution is unwritten.
    - One of the most important features of the British Constitution is its flexibility. This means that it can be amended by the Parliament.
2. The British Constitution is a unique blend of monarchy, aristocracy and democracy. It is a Monarchic due to the existence of the Queen and King. It is aristocratic because of the House of Lords. It is Democratic because Britain is a democratic state run by a Parliament elected by the people.
3. Two conventions of the British Constitution are:
    - The British monarch cannot veto the bills passed by the parliament.

- The sovereign invites the leader of the majority party in the House of Commons to form the cabinet.

4. The British Parliament has two houses: the House of Lords and the House of Commons.
5. The House of Commons currently has 635 members.
6. The powers of the British Monarch comes from the following sources:
   i. prerogative
   ii. statute
7. The executive powers of the Crown are as follows:
   - The power to appoint all judges, military men, administrative and executive officers.
   - The power to supervise administrative functions and work
8. Sometimes, distinction is made between the cabinet and the ministry. The cabinet is only an inner circle of the ministry. A ministry is a large body consisting of all categories of the ministers who have seats in the parliament and are responsible to it. The cabinet, on the other hand, is a small body consisting of the most important ministers.
9. The Prime Minister is concerned with the formation of the ministry. Along with this function, he is also endowed with the task of distributing portfolios.

3.8 SUMMARY

- Unlike the Indian Constitution, the British Constitution is unwritten. The British Constitution has developed through a process of gradual evolution. One of the most important features of the British Constitution is its flexibility. This means that it can be amended by the Parliament. England's constitution is a unitary constitution. All the powers of the state are concentrated in the hands of a single government for the whole country.
- Like India, the British political system is a party system that has been working successfully largely due to the existence of two major parties. These parties are Labour Party and the Conservative Party.
- The British Constitution is a unique blend of monarchy, aristocracy and democracy. It is a Monarchic due to the existence of the Queen and King. It is aristocratic because of the House of Lords. It is Democratic because Britain is a democratic state run by a Parliament elected by the people.
- The sources of the British constitution can be divided into two parts:
  - o The laws of the constitution
  - o The conventions of the constitution

- The laws of the constitution are based on written documents. These include historic documents, acts of the parliament, judicial decisions and common laws. The laws made by the parliament from time to time have also contributed and furthered the transition to constitutional government in Britain. Judicial decisions are also important sources of the British constitution. Common laws are also a very important source of British constitution.
- The conventions are not recognized or enforced by any court. These are highly respected by the British electorate and leadership. The conventions of the British constitution are actually of an unwritten character.
- According to Dicey, the conventions are observed because they are based on and sanctioned by law. The power behind them is the power of law. On the other hand, Lowell says that conventions are observed because they are a code of honour. Ogg says that the force behind the conventions is the force of the public opinion.
- The British Parliament is the oldest legislative institution in the world. The Parliament in general enjoys law making power, financial powers, and exercises control over the executive. Besides performing educative functions, the Parliament also acts a forum for ventilation of public grievances.
- The British Parliament consists of two houses: the House of Lords and the House of Commons.
- The House of Commons is the popular chamber whose members are elected directly by the people. It consists of elected representatives of the people who represent the nation as a whole.
- The House of Lords is the oldest upper House in the world. This House consists of more than one thousand Peers of Lords. The term 'peer' means an equal, and originally, it referred to the feudal tenants-in-chief of the monarch.
- The Crown is the institution while the King (or the Queen) is an individual who is considered the physical manifestation of that institution. The powers of the Crown keep changing off and on. Sometimes they are curtailed and sometimes they are allowed to reach new heights.
- The cabinet is 'the core of the British constitutional system'. It is the most important single piece of mechanism in the structure of the British Government. It is the supreme directing authority of the government and the real ruler of Great Britain.
- Sometimes, distinction is made between the cabinet and the ministry. The cabinet is only an inner circle of the ministry. A ministry is a large body consisting of all categories of the ministers who have seats in the parliament and are responsible to it. The cabinet, on the other hand, is a small body consisting of the most important ministers.

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- The cabinet defines the lines of the national policy; it not only formulates and defines policies, it also executes them. The cabinet guides and largely controls the functions of the Parliament. It is responsible for the entire expenditure of the nation.
- The prime minister is by far the most important man in the country. He is also described as the master of the government. He is concerned with the formation of the ministry. Along with this function, he is also endowed with the task of distributing portfolios. His other functions include presiding over the meetings of the cabinet, acting as the chief coordinator of policies of various departments, performing his duties as the sole advisor to the monarch, etc.

3.9 KEY WORDS

- **Aristocracy:** Aristocracy refers to the highest class in certain societies, usually comprising those people who are of noble birth and hold titles and offices.
- **Bicameralism:** Bicameralism is the practice of having two legislative or parliamentary chambers or houses.
- **Peers of Lords**: The term 'peer' means an equal, and originally, it referred to the feudal tenants-in-chief of the monarch. These tenants in chief more or less enjoyed equal privileges, and they were summoned by the King to be present when a new Parliament met. Peer ship became hereditary under the law of primogeniture, where the eldest son had the right to inherit the father's legacy, and become a member of the House of Lords.
- **British Crown:** The Crown is the institution while the King (or the Queen) is an individual who is considered the physical manifestation of that institution. It expresses the fact that even though the person holding the position of the king is dead, the office continues to exist.

3.10 SELF ASSESSMENT QUESTIONS AND EXERCISES

Short-Answer Questions

1. What are the powers and functions of the British Parliament?
2. What are the executive powers of the Crown?
3. What are the reasons behind the survival of monarchy in Britain?
4. What are the prominent functions of the Cabinet?

Long-Answer Questions

1. Examine the features of the British Constitution.
2. Explain the powers of the British monarchy.
3. Discuss the features of the Cabinet system.
4. Describe the functions of the Prime Minister.

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UNIT 4 BRITISH PARLIAMENTARY COMMISSIONER, TREASURY AND CIVIL SERVICE

Structure

4.0 Introduction
4.1 Objectives
4.2 British Parliamentary Commissioner
4.3 Treasury
4.4 British Civil Service
4.5 Answers to Check Your Progress Questions
4.6 Summary
4.7 Key Words
4.8 Self Assessment Questions and Exercises
4.9 Further Readings

4.0 INTRODUCTION

In this unit, you will learn about the appointment and functions of the Parliamentary Commissioner for Standards in the House of Commons and the House of Lords Commissioner for Standards. The responsibilities of the Exchequer will also be delved into. The services provided by the British Civil Service will also be discussed, while also outlining the professions that fall under its purview.

4.1 OBJECTIVES

After going through this unit, you will be able to:

- Understand the role of the Parliamentary Commissioner for Standards
- Examine the objectives and priorities of the Exchequer
- Analyse the responsibility of the British Civil Service

4.2 BRITISH PARLIAMENTARY COMMISSIONER

The Parliamentary Commissioner for Standards is an officer of the British House of Commons. The Commissioner is in charge of regulating MPs' conduct and propriety. One of the Commissioner's main tasks is overseeing the *Register of Members' Financial Interests*, which is intended to ensure disclosure of financial

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interests that may be of relevance to MPs' work. The current Parliamentary Commissioner for Standards is Kathryn Stone OBE.

Appointment

He or she is appointed by a Resolution of the House of Commons, and works a four-day week. The Parliamentary Commissioner for Standards is appointed by a Resolution of the House of Commons for a fixed term of 5 years and is an independent officer of the House. The remit of the Parliamentary Commissioner for Standards does not extend to the House of Lords: the post of Lords Commissioner for Standards was created in 2010.

Role

The Parliamentary Commissioner for Standards in the House of Commons is Kathryn Stone OBE. Her role is:

- to provide advice
- to investigate allegations that MPs have broken their Code of Conduct and its supporting rules
- to decide complaints from the parliamentary community about harassment, bullying or sexual harassment by MPs
- to keep the MPs' Code of Conduct under review

Some things the Commissioner does not do:

- She cannot investigate complaints about what Ministers have done in their Ministerial role
- She cannot investigate Members of the House of Lords. (This is the task of the Lords Commissioner).
- She cannot investigate complaints about how an MP has dealt with a constituent's concern, or about the level of service they provide
- She cannot investigate complaints about MPs' expenses, or about criminal matters.

Code of Conduct

The Code of Conduct describes the responsibilities that MPs have as Members of the House and are based on a set of principles. The *Guide to the Rules relating to the conduct of Members* sets out in detail MPs' obligations to register and declare their financial interests, and the restrictions on lobbying for reward or consideration. It also describes the procedure for the investigation of complaints.

These responsibilities are separate from and additional to those of other citizens. The Code applies to MPs in all aspects of their public life. It does not seek to regulate what MPs do in their purely private and personal lives.

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The obligations set out in the Code are complementary to those which apply to all MPs by virtue of procedural and other rules of the House and the rulings of the Chair, and to those which apply to MPs whose conduct is also within the scope of the Ministerial Code.

The rules create obligations that MPs must follow. The House of Commons also provides guidance to MPs. Guidance generally reflects good practice but it may not be appropriate on every occasion.

The Commissioner may only investigate allegations of breaches of the rules. She may not investigate complaints about:

- policy matters;
- a Member's views or opinions; and
- a Member's handling of or decision about a case, including their handling of correspondence, whether or not anyone involved is a constituent of the Member

Unless the MP's conduct is such that it significantly damages the reputation of the House of Commons as a whole or of its Members more generally.

Standards and Financial Interests

MPs and Members of the Lords must declare certain financial interests. The purpose is to provide information on any financial or non-financial benefit received by a MP or Member of the Lords which might reasonably be thought by others to influence their actions, speeches or votes in Parliament or influence their actions taken in their capacity as a Member.

House of Lords Commissioner for Standards

The House of Lords Commissioner for Standards is responsible for the independent and impartial investigation of alleged breaches of the House of Lords Code of Conduct. This includes investigating breaches of the rules on members' financial support, use of parliamentary facilities and treatment of those with whom they come into contact in the course of their parliamentary duties and activities. The current Commissioner is Lucy Scott-Moncrieff CBE. She was appointed by the House as Commissioner for Standards for five years from 1 June 2016. She was president of the Law Society of England and Wales from 2010 to 2013.

When making a complaint the following information should be provided:

- in what respect the member concerned is alleged to have breached the Code of Conduct or broken the rules governing the use of financial support or parliamentary facilities
- as much evidence as possible in support of the complaint
- name, postal address, telephone number and, if possible, email address.

The Commissioner conducts a preliminary assessment of all complaints. Following this preliminary assessment she will inform both the complainant and the member concerned whether or not she will investigate the complaint. If the Commissioner decides that a complaint does not merit investigation then she will provide the person who has complained with a brief explanation of the reasons for her decision.

4.3 TREASURY

HM Treasury (Her Majesty's Treasury), sometimes referred to as the Exchequer, or more informally the Treasury, is the department of the Government of the United Kingdom responsible for developing and executing the government's public finance policy and economic policy. The Treasury maintains the Online System for Central Accounting and Reporting (OSCAR), the replacement for the Combined Online Information System (COINS), which itemises departmental spending under thousands of category headings, and from which the Whole of Government Accounts (WGA) annual financial statements are produced. It is the government's economic and finance ministry, maintaining control over public spending, setting the direction of the UK's economic policy and working to achieve strong and sustainable economic growth. The possessive adjective in the department's name varies depending upon the sex of the reigning monarch.

Responsibilities

They are responsible for:

- public spending: including departmental spending, public sector pay and pension, annually managed expenditure (AME) and welfare policy, and capital investment
- financial services policy: including banking and financial services regulation, financial stability, and ensuring competitiveness in the City
- strategic oversight of the UK tax system: including direct, indirect, business, property, personal tax, and corporation tax
- the delivery of infrastructure projects across the public sector and facilitating private sector investment into UK infrastructure
- ensuring the economy is growing sustainably

Priorities

Their priorities are:

- achieving strong and sustainable growth
- reducing the deficit and rebalancing the economy
- spending taxpayers' money responsibly

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- creating a simpler, fairer tax system
- creating stronger and safer banks
- making corporate taxes more competitive
- making it easier for people to access and use financial services
- improving regulation of the financial sector to protect customers and the economy

Objectives

Their objectives are:

1. Place the public finances on a sustainable footing
2. Ensure the stability of the macro-economic environment and financial system, enabling strong, sustainable and balanced growth
3. Increase employment and productivity, and ensure strong growth and competitiveness across all regions of the UK through a comprehensive package of structural reforms

4.4 BRITISH CIVIL SERVICE

Her Majesty's Home Civil Service, also known as Her Majesty's Civil Service or the Home Civil Service, is the permanent bureaucracy or secretariat of Crown employees that supports Her Majesty's Government, which is composed of a cabinet of ministers chosen by the Prime Minister of the United Kingdom of Great Britain and Northern Ireland, as well as two of the three devolved administrations: the Scottish Government and the Welsh Government, but not the Northern Ireland Executive.

Her Majesty's Home Civil Service forms an inseparable part of the British government. The executive decisions of government ministers are implemented by HM Civil Service. The Civil Service helps the government of the day develop and implement its policies as effectively as possible.

The Civil Service provides services directly to people all over the country, including:

- paying benefits and pensions
- running employment services
- running prisons
- issuing driving licences

They also have staff working on policy development and implementation, including analysts, project managers, lawyers and economists.

They are politically impartial and independent of government and work in central government departments, agencies, and non-departmental government

bodies (NDPBs). The Civil Service does not include government ministers (who are politically appointed), members of the British Armed Forces, the police, officers of local government or NDPBs of the Houses of Parliament, employees of the National Health Service (NHS), or staff of the Royal Household.

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They are co-ordinated and managed by the Prime Minister, in her role as Minister for the Civil Service. The most senior civil servant in a department is a permanent secretary.

As they are accountable to the public we need to meet the highest possible standards in all that they do. They aim to have:

- integrity - putting the obligations of public service above personal interests
- honesty - being truthful and open
- objectivity - basing advice and decisions on rigorous analysis of the evidence
- impartiality - acting solely according to the merits of the case and serving governments of different political parties equally well

Functional model

To create a more skilled and unified organisation to transform services and achieve significant savings for the taxpayer, they are developing 10 specialist areas of expertise. These cross-government functions provide professional services and support to departments.

The Functional Model sets out how the Civil Service will be structured. They are:

- analysis
- commercial
- communications
- corporate finance
- digital
- finance
- fraud, error, debt and grants
- human resources
- internal audit
- legal
- project delivery
- property

Professions

The Civil Service is made up of 25 professions. Each profession has developed its own competency framework, which supports the wider civil service framework.

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The Civil Service is made up of a wide range of professional roles – from communicators and engineers, to procurement managers and lawyers. There are currently 28 recognised professions, each led by a head of profession:

- Corporate Finance Profession
- Counter-fraud Standards and Profession
- Digital, Data and Technology Professions
- Government Communication Service
- Government Economic Service
- Government Finance Profession
- Government IT Profession
- Government Knowledge and Information Management Profession
- Government Legal Profession
- Government Occupational Psychology Profession
- Government Operational Research Service
- Government Planning Inspectors
- Government Planning Profession
- Government Property Profession
- Government Security Profession
- Government Science and Engineering Profession
- Government Social Research Profession
- Government Statistical Service Profession
- Government Tax Profession
- Government Veterinary Profession
- Human Resources Profession
- Intelligence Analysis
- Internal Audit Profession
- Medical Profession
- Operational Delivery Profession
- Policy Profession
- Procurement Profession
- Project Delivery Profession

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In most cases membership of professions is open to anyone working in government departments, agencies or non departmental public bodies. Some professions also permit membership to professionals outside of government, such as the wider public sector. In general they:

- provide a governance structure
- raise standards
- provide career development opportunities
- promote collaboration

Check Your Progress

1. Who appoints the British Commissioner for Standards in the House of Commons?
2. When was the post of Lords Commissioner for Standards created?
3. Who is the current Parliamentary Commissioner for Standards in the House of Commons?
4. What are the responsibilities of the House of Lords Commissioner for Standards?
5. Who is the current House of Lords Commissioner for Standards?
6. What are the objectives that the Exchequer attempts to achieve?

4.5 ANSWERS TO CHECK YOUR PROGRESS QUESTIONS

1. The Parliamentary Commissioner for Standards is appointed by a Resolution of the House of Commons for a fixed term of 5 years and is an independent officer of the House
2. The post of Lords Commissioner for Standards was created in 2010.
3. The current Parliamentary Commissioner for Standards in the House of Commons is Kathryn Stone OBE.
4. The House of Lords Commissioner for Standards is responsible for the independent and impartial investigation of alleged breaches of the House of Lords Code of Conduct. This includes investigating breaches of the rules on members' financial support, use of parliamentary facilities and treatment of those with whom they come into contact in the course of their parliamentary duties and activities.

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5. The current House of Lords Commissioner for Standards is Lucy Scott-Moncrieff CBE.
6. The objectives of the Exchequer are:
   (i) Place the public finances on a sustainable footing
   (ii) Ensure the stability of the macro-economic environment and financial system, enabling strong, sustainable and balanced growth
   (iii) Increase employment and productivity, and ensure strong growth and competitiveness across all regions of the UK through a comprehensive package of structural reforms

4.6 SUMMARY

- The Parliamentary Commissioner for Standards is an officer of the British House of Commons. The Commissioner is in charge of regulating MPs' conduct and propriety.
- The Parliamentary Commissioner for Standards is appointed by a Resolution of the House of Commons for a fixed term of 5 years and is an independent officer of the House.
- The Code of Conduct describes the responsibilities that MPs have as Members of the House and are based on a set of principles. It also describes the procedure for the investigation of complaints.
- The House of Lords Commissioner for Standards is responsible for the independent and impartial investigation of alleged breaches of the House of Lords Code of Conduct. This includes investigating breaches of the rules on members' financial support, use of parliamentary facilities and treatment of those with whom they come into contact in the course of their parliamentary duties and activities.
- HM Treasury (Her Majesty's Treasury), sometimes referred to as the Exchequer, or more informally the Treasury, is the department of the Government of the United Kingdom responsible for developing and executing the government's public finance policy and economic policy.
- Her Majesty's Home Civil Service, also known as Her Majesty's Civil Service or the Home Civil Service, is the permanent bureaucracy or secretariat of Crown employees that supports Her Majesty's Government, which is composed of a cabinet of ministers chosen by the Prime Minister of the United Kingdom of Great Britain and Northern Ireland, as well as two of the three devolved administrations: the Scottish Government and the Welsh Government, but not the Northern Ireland Executive.

- The Civil Service is made up of 25 professions. Each profession has developed its own competency framework, which supports the wider civil service framework.

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4.7 KEY WORDS

- **Resolution:** A resolution is a written motion adopted by a deliberative body. It is usually passed after taking a vote. They are are commonly used in corporations and houses of legislature.
- **Code of Conduct:** The Code of Conduct describes the responsibilities that MPs have as Members of the House and are based on a set of principles.
- **Treasury:** Treasury is the department of the Government of the United Kingdom responsible for developing and executing the government's public finance policy and economic policy.
- **Functional Model:** The functional model attempts to give a structure to Civil Service developing areas of expertise. To create a more skilled and unified organisation to transform services and achieve significant savings for the taxpayer, these cross-government functions provide professional services and support to departments.

4.8 SELF ASSESSMENT QUESTIONS AND EXERCISES

Short-Answer Questions

1. Write a short note on the appointment of the Parliamentary Commissioner for Standards.
2. What are the responsibilities of the House of Lords Commissioner for Standards?
3. How does the functional model provide assistance to the British Civil Service?
4. Write a short note on the professions that come under the purview of the British Civil Service.

Long-Answer Questions

1. Discuss the functions of the Parliamentary Commissioner for Standards.
2. Analyse the responsibilities of the Exchequer.
3. Examine the role and responsibilities of the British Civil Service.

4.9 FURTHER READINGS

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BLOCK - III
ADMINISTRATIVE SYSTEM OF FRANCE AND JAPAN

UNIT 5 ADMINISTRATIVE SYSTEM OF FRANCE

Structure

5.0 Introduction
5.1 Objectives
5.2 French Constitution
5.3 The French Parliament
5.4 French President
5.5 The Prime Minister
5.6 Council of Ministers
5.7 Answers to Check Your Progress Questions
5.8 Summary
5.9 Key Words
5.10 Self Assessment Questions and Exercises
5.11 Further Readings

5.0 INTRODUCTION

In this unit, you will learn about the administrative system of France. It will begin with an examination of the salient features of the French Constitution. The Fundamental Rights, as derived from the Declaration of the Rights of Man and of the Citizen, is one of the fundamental documents of the French Revolution. The unit will then delve into the various aspects of the French Government. It will begin with a discussion on the French Parliament, while also describing the powers and functions of the President, Prime Minister and the Council of Ministers.

5.1 OBJECTIVES

After going through this unit, you will be able to:

- Examine the salient features of the French Constitution
- Discuss the Fundamental Rights provided by the French Constitution
- Analyse the powers and functions of the French President, Prime Minister and the Council of Ministers.

5.2 FRENCH CONSTITUTION

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The present constitution of France, called the 1958 Constitution, contains a Preamble and 92 Articles. It embodies both republican and presidential characteristics and is considered a hybrid of the two.

Its salient features may be described as follows:

- **Preamble:** The preamble of the French constitution reaffirms the revolutionary document of the French Revolution of 1789 known as the Declaration of the Rights of Man and the Citizen. The Declaration was based on the doctrine of 'natural law' and 'general will' and guaranteed the right of free speech, free press, assembly and religion, except when limited by law. It also provided for the right to private property except when it is required for public cause. Just compensation was to be paid for the acquisition of such property. You will learn more about the Declaration of the Rights of Man later on in the unit.
- **Popular sovereignty:** According to the French Constitution, sovereignty lies with the people of France who utilize this power through referendum and also by electing their public representatives. Article 2 of the French Constitution calls France an 'Indivisible, Secular, Democratic and Social Republic'. As such, the constitution provides for universal suffrage to French citizens on reaching a particular age. It also gives citizens the right to freely form political parties provided that they adhere to the principles of sovereignty and democracy.
- **Rigid Constitution:** It is extremely difficult to revise the French Constitution that was formulated in 1958. The Republican nature of the French Constitution is not subject to any type of revision. The process of constitutional revision is based on Article 89 of the French Constitution. According to Article 89, a proposal for constitutional revision from the President or from private members must be voted first in identical terms by both Houses of Parliament and then ratified by a Referendum or, if the President decides otherwise, by a three-fifths majority of both Houses, meeting as Congress. The consent of the Senate needs to be sought before a constitutional revision can be brought about. In case the president decides not to submit a proposed revision to a referendum, such revision must first be passed individually by both Houses of Parliament in identical terms and thereafter by a three-fifths majority of both Houses, meeting as Congress, before it can be brought on the Statute book. Due to this complicated process of revision many call the French Constitution a rigid constitution.
- **Quasi-presidential and Quasi-parliamentary:** The 1958 French Constitution can be considered to be an amalgamation of the principles of Parliamentary democracy and Presidential form of government. On the one

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hand, the Constitution provides for a democratic and parliamentary system of government. The Prime Minister is the head of government and is responsible to Parliament. The Parliament consists of two chambers, both of them democratically elected. The French Constitution gives the government the duty of legislation. The Parliament is the supreme lawmaking organ, which delegates rule-making powers to the Government. Such powers can be withdrawn at its will by the Parliament.



Fig. 5.1 *General De Gaulle*

The head of French state is the President. Now, in a parliamentary system of government, the President would be a nominal head (like in India); however, this is not the case in France. The 1958 French Constitution gives the President of France enormous powers. The former French President General de Gaulle (Figure 10.1), who was one of the main driving force of the new Constitution in 1958, considered the head of state as someone who represented the nation rather than parliament. As such, the President's main function was to be a representative of the continuity of the state—'an arbitrator above the accidents of political life'. Thus, the constitution gives the President of France an exalted position at the expense of the French Prime Minister and his or her cabinet. The French President does not govern; neither is he a nominal figure head. The French President wields enormous influence in matters relating to foreign affairs and national security. His

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greatest power lies in his ability to choose the Prime Minister. However, this power is checked by the fact that the person that the French President chooses as Prime Minister must be someone who commands a majority in Parliament. Thus, it can be stated that the Constitution of France is quasi-presidential and quasi parliamentary.

- **Vague and ambiguous**: Many critics have called the 1958 Constitution as vague and ambiguous. This is because the Constitution does not adequately describe the system of government, and also omits to mention other extremely critical areas and institutions like the organization of the judiciary, electoral laws, composition of the two houses of Parliament, and so on. As a result, more than 300 ordinances were passed between1958-1959 dealing with these issues. The huge number of ordinances makes the task of the French constitution interpreters extremely difficult. Another matter that complicates things for the interpreters of the French constitution is that the 1958 Constitution was drafted by a small group of ministers and General De Gaulle and was never debated in parliament. Thus, the precise meaning of phrases and articles in the Constitution was not ascertained, leaving the government to interpret the constitution in a way to suit its interests.
- **Separation of powers:** One important feature of the 1958 French Constitution is the separation of legislative and executive powers. As stated above, the French President nominates the Prime Minister, who in turns elects his cabinet who are then appointed by the President. Article 23 of the French Constitution specifically states that a member of government cannot be a member of parliament, i.e., it is forbidden to hold both governmental office as well as parliamentary membership. At the same time, a member of government is responsible to Parliament. Cabinet members have to answer questions put to them by Members of Parliament. Moreover, if the Parliament passes a censure motion against the cabinet, the council of ministers are forced to resign.
- **The Constitutional Council**: The French Constitution of 1958 provides for the establishment of a Constitutional Council. The main objective behind the establishment of this council was to create a watchdog over the government and check the constitutionality of government and parliamentary acts. The Constitutional Council has basically four distinct functions. According to Articles 58, 59 and 60 of the French Constitution, the Constitution Council supervises the Presidential elections as well as referendums and proclaims the results. They are also responsible for declaring the Presidency vacant if for any reason the President is cannot carry out his duties. Article 61 provides that the Council must also be consulted on the conformity with the Constitution of organic laws and Standing Orders of both Houses before their implementation. Article 16 states that the Council must be consulted by the president regarding both the existence of an emergency and the measures that he proposes to take to deal with them.

The advice of the Council also needs to be taken in relation to the legality of international treaties; it must also resolve disputes between the government and the legislature regarding the delimitation of executive and legislative competence.

- **Advisory Council:** The 1958 Constitution provided for the setting up an advisory body called the Economic and Social Council. Primarily a technical advisor of the government, the Economic and Social Council gives its opinion on the government bills, drafts ordinances, orders and private members' bill submitted to it by the government.
- **Political parties are recognized:** Another extremely important feature of the 1958 French Constitution is that unlike the American and Indian Constitution, it explicitly recognizes political parties. The recognition for political parties is found in Article 4 of the French Constitution. According to Article 4, 'Political parties and groups shall be instrumental in the exercise of the suffrage. They shall be freely formed and shall freely carry on their activities. They must respect the principles of national sovereignty and democracy.'

Fundamental Rights

French citizens enjoy a great deal of Fundamental Rights as described in the Constitution. Article 2 of the Constitution mentions the rights that the citizens have.

The Constitution of France contains the main laws that pertain to Fundamental Rights, and these are applicable to citizens as well as non-citizens. The Fifth Republic Constitution of 1958 embodies the integral principles that are contained in the Declaration of the Rights of Man and of the Citizen of 1789 and the Preambule de la Constitution du 27 October 1946 in the form of its own 'Bill of Rights'. The laws contained in the Constitution strictly adhere to the principle of equality by prohibiting discrimination; and offering equal rights to all in terms of work and access to healthcare and social security.

The fundamental rights of French citizens are derived from the Declaration of the Rights of Man and of the Citizen, one of the fundamental documents of the French Revolution. This declaration established fundamental rights of not only French citizens but also acknowledged the rights of all human beings without exception. The Declaration of the Rights of Man declared the following rights:

- Article I - Men are born and remain free and equal in rights. Social distinctions can be founded only on the common good.
- Article II - The goal of any political association is the conservation of the natural and imprescriptible rights of man. These rights are liberty, property, safety and resistance against oppression.
- Article III - The principle of any sovereignty resides essentially in the Nation. No body, no individual can exert authority which does not emanate expressly from it.

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- Article IV - Liberty consists of doing anything which does not harm others: thus, the exercise of the natural rights of each man has only those borders which assure other members of the society the enjoyment of these same rights. These borders can be determined only by the law.
- Article V - The law has the right to forbid only actions harmful to society.

  Anything which is not forbidden by the law cannot be impeded, and no one can be constrained to do what it does not order.
- Article VI - The law is the expression of the general will. All the citizens have the right of contributing personally or through their representatives to its formation. It must be the same for all, either that it protects, or that it punishes. All the citizens, being equal in its eyes, are equally admissible to all public dignities, places and employments, according to their capacity and without distinction other than that of their virtues and of their talents.
- Article VII - No man can be accused, arrested nor detained but in the cases determined by the law, and according to the forms which it has prescribed. Those who solicit, dispatch, carry out or cause to be carried out arbitrary orders, must be punished; but any citizen called or seized under the terms of the law must obey at once; he renders himself culpable by resistance.
- Article VIII - The law should establish only penalties that are strictly and evidently necessary, and no one can be punished but under a law established and promulgated before the offense and legally applied.
- Article IX - Any man being presumed innocent until he is declared culpable, if it is judged indispensible to arrest him, any rigor which would not be necessary for the securing of his person must be severely reprimanded by the law.
- Article X - No one may be disturbed for his opinions, even religious ones, provided that their manifestation does not trouble the public order established by the law.
- Article XI - The free communication of thoughts and of opinions is one of the most precious rights of man: any citizen thus may speak, write, print freely, except to respond to the abuse of this liberty, in the cases determined by the law.
- Article XII - The guarantee of the rights of man and of the citizen necessitates a public force: this force is thus instituted for the advantage of all and not for the particular utility of those in whom it is trusted.
- Article XIII - For the maintenance of the public force and for the expenditures of administration, a common contribution is indispensable; it must be equally distributed between all the citizens, according to their ability to pay.

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- Article XIV - Each citizen has the right to ascertain, by himself or through his representatives, the need for a public tax, to consent to it freely, to know the uses to which it is put, and of determining the proportion, basis, collection, and duration.
- Article XV - The society has the right of requesting account from any public agent of its administration.
- Article XVI - Any society in which the guarantee of rights is not assured, nor the separation of powers determined, has no Constitution.
- Article XVII - Property being an inviolable and sacred right, no one can be deprived of private usage, if it is not when the public necessity, legally noted, evidently requires it, and under the condition of a just and prior indemnity.

  Along with this, the fundamental rights enshrined in the French Constitution are also derived from the 1948 Universal Declaration of Human Rights, the 1960 European Convention on Human Rights and the Charter of Fundamental Rights of the European Union, all of which France has ratified.

Check Your Progress

1. Why is the French Constitution considered a rigid constitution?
2. What is the function of the Advisory Council?

5.3 THE FRENCH PARLIAMENT

France does not have a monarchy nor is there a system of election described in the French Constitution. The French Parliament, like other Parliaments of the top democracies, is a bicameral like its prototype in the Fourth Republic.

Composition of the French Parliament

The French Parliament comprises two houses:

(i) The Senate (the upper chamber)

(ii) The National Assembly (the lower chamber)

As laid down in the French Constitution, the deputes of the lower chamber are elected through direct suffrage while the deputies of the upper chamber are selected through indirect suffrage. The Organic Acts or laws (short, fixed list of statutes) lay down the specifications such as the number of members, their required qualifications, the perks they are entitled to and the functions of their office.

The lower chamber comprises over 465 Deputies who are appointed in keeping with these laws or acts. It consists of 577 members in total. The candidates have to go through two ballot systems in a single member constituency. They have to first gain an absolute majority in the first ballot followed by a simple majority in the second. The representation is based on one seat per 93,000 inhabitants. Although an assembly lasts for five years, it can be dissolved earlier. Suffrage is secretive, universal and equal throughout. According to the law of France, French citizens are allowed to vote and enjoy all civil and political rights granted by the French Constitution.

The Senate or upper chamber is inclusive of the representatives of the territorial entities of the Republic. Therefore, the 307 strong membership is distributed across the following:

- Metropolitan France
- Overseas departments
- Overseas territories
- French citizens living in foreign countries

Importantly, 225 seats are allotted to the metropolitan France. These are again distributed department-wise. Each department is like a municipal committee in our country. There is one seat per 1,50,000 residents and an additional seat for every additional 2,50,000 or fraction of the residents. The composition of each electoral college is as follows:

- Local parliamentary deputies
- Members of the departmental councils
- Representatives of the municipalities depending on the size of the various municipal councils

In addition to these techniques, communes or small French territorial divisions, with more than 9,000 inhabitants select their delegates through proportional representation. The communes with low population make their selection through absolute majority (through three ballots). The Senators are then elected by the selected colleges. The seven largest departments, entitled to five or more seats follow proportional representation while members in the other department are elected by majority vote and the second ballot system. The Senate has a life span of nine years, with a third allowed to be renewed every third year. A Senate has to be at least 35 years old where a Deputy should be at least 27 years of age.

Members of Parliament: Their Rights and Advantages

The rights and benefits enjoyed by the members of Parliament are cited in the Article 26 of the Constitution. According to one such privilege, no member can be arrested, detained, interrogated or subjected to a trial based on opinions expressed

or votes cast in the course of their duties. But, at the same time, they would be accountable for any statement made outside the Parliament or anything published externally. While the Parliament is in session, the members may not be questioned about anything they have done or said personally or in private. However, proceedings may be taken against them, if the House to which the member belongs, decides by vote, to suspend the immunity. The exceptions are certain petty offences for which the member need not forego his duties in the Parliament. Certain offences are considered serious and referred to as *flagrante delicto*. In case arrests are authorized in a session, the concerned members may be arrested in the subsequent session if the bureau of the House authorizes the same. Meetings can be called even if the Parliament is not in session. There can be suspension of an order to detain or prosecute a member, if the Assembly (to which the member belongs) so demands. Therefore, mandatory orders to the Member of Parliament are void.

Proxy is not allowed as per Article 27 of the Constitution. Proxy was popular and frequent under the Fourth Republic. There were times when only the participants would turn up for debates among the opposition parties. However, at the time of voting, significant number of votes were cast via proxy votes. Presently, members are allowed to delegate their votes only after taking written permission only for the following reasons:

- If they are ill
- If family circumstances do not allow the members to attend
- If the member(s) are away on government duty or military service
- If the member(s) is travelling out of France on some special session
- If the member(s) is representing the Senate or the Assembly at an international assembly meeting.

In addition, one member is allowed to vote proxy only once and not for more than one member.

According to the Constitution, the members are expected to vote in person and on a regular basis. Attendance here implies being present for voting and not for debating. Incentives such as attendance bonus are given to members with satisfactory attendance. Penalty is slapped on members with poor attendance. Those absent for three consecutive sittings of the commission, are asked to explain the reason for absence. In the absence of reasonable justification, not only does the member have to forego the attendance bonus, he/she is expected to submit his resignation to the Commission. If the member has been absent without a satisfactory reason from more than one third of the votes by ballot in a month, he/she loses out on one third of the monthly attendance bonus. If the member is not present for over half the votes, two-thirds of the bonus is forfeited.

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Sessions

The Parliaments meets two times in a year, once on the 2nd of April to discuss the budget and then again on the 2nd of October to discuss the legislative programme. If the prime minister ever puts in a request for a special session, the president of the Republic is authorized to conduct such a session. Such a session can also be conducted if a majority of the members of the National Assembly wish to discuss any agenda in particular. However, such a session should be closed the moment the agenda is completed, or within twelve days. Once the second session commences, the bureau, comprising a president, ten vice presidents (six for the lower chamber and four for the upper chamber),twenty secretaries (twelve for the lower chamber and eight for the upper chamber), and three questeurs for each house, are elected and appointed by each house. The members of this bureau are collectively responsible for the following:

- Organizing the different services in the lower chamber
- Supervising the various services in the lower chamber
- Advising the President of the Assembly, particularly on the disciplinary matters and the admissibility of the Bills or resolutions

The President

The oldest member presides over the first meeting of the session. In this session, the President of the Assembly is elected. Earlier, the President was elected every year. However, the tenure has now been reduced to the duration of the Assembly. The President of the upper chamber, however, is elected for a three year tenure, which lasts till the next partial renewal period. Secret ballot is practised. Therefore, there is no chance of corruption. An absolute is mandatory in the first and second ballot while a relative majority suffices at the third ballot.

A president performs the same functions as that of a chairman, that is:

(i) Regulating business in the House
(ii) Maintaining discipline
(iii) Putting up Bills to vote and declaring results
(iv) Interpreting the rules of the House
(v) Providing consultation or advice to the President of the Republic in situations of emergency (as laid down in Article 16).

A private member's Bill or amendment, which is perceived as constitutional by the president of the Assembly but is challenged by the government as unconstitutional, is required to be submitted to the Constitutional Council, or else ruled out of order. Despite Presidents possessing no unchallenged authority, they occupy a position of prestige.

The French Parliament: Legislative and Executive Powers

Let us now look at the roles and responsibilities of the French Parliament, which is nothing but a legislature where law is made:

- **Legislative powers:** According to Article 34 of the Constitution, the Parliament shall:
  - o Establish rules for exercising the following:
    - (i) Public liberties
    - (ii) Civil and fundamental rights
    - (iii) National defence obligations imposed on citizens in respect of their persons and property
  - o Establish the rules for the following:
    - (i) nationality
    - (ii) Status and legal capacity of persons
    - (iii) Property rights arising out of a matrimonial relationship
    - (iv) Inheritance and gifts
  - o Establish rules to determine the following:
    - (i) Felonies and misdemeanours
    - (ii) Penalties for felonies and misdemeanours
    - (iii) Criminal procedure
    - (iv) Amnesty
    - (v) Creation of new jurisdictions
    - (vi) Status of judges
  - o Establish the rules for the following:
    - (i) Assessment bases
    - (ii) Rates and methods of collective taxes of all types
    - (iii) Issuance of currency

  The Parliament determines the rules and regulations concerning the following:
  - o The electoral systems of the Parliamentary Assemblies and local
  - o Assemblies
  - o Categorization of public establishments
  - o Granting of fundamental guarantees to civil and military personnel employed by the state
  - o Nationalization of companies and transfers of company ownership from the public to the private sector

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The Parliament lays down rules regarding the following:

- o How the national defence should be organized
- o The kind of powers and resource local authorities should have
- o Education systems
- o The manner in which property rights as well as civil and commercial obligations should be governed.
- o The law and social security provided by the labour and trade unions

- **Executive powers:** As per the Constitution of the Fourth Republic, the National Assembly had a say in the appointment of the prime minister and his ministers. The individual selected to be prime minister needs to acquire the confidence of the lower chamber or Assembly for whatever he wishes to pursue. If his programmes or policies are rejected by the Assembly, this is considered a vote of censure. In case of such rejection, the prime minister designate and his ministers are not appointed by the president. The 1958 Constitution does not allow the upper chamber any voice in the appointment of the Prime Minister and his ministers. The formal investiture ceremony is no longer followed. However, prime minister and his Council of ministers are accountable to the Assembly.

The National Assembly may pass a motion of censure to challenge the responsibility of the Government. A minimum of one tenth of the members of the National Assembly need to put their signatures to give their consent for such a motion. After the motion has been tabled, 48 hours have to pass before the votes supporting the motion of censure can be counted. The adoption of the motion is subject to a majority of the membership of the Assembly. In case the motion of censure meets with rejection, it is not possible for the signatories to introduce another motion in the same session unless the case is as follows:

> The Prime Minister may, after deliberation by the Council of Ministers, commit the Government's responsibility to the National Assembly on the passing of a bill. In this case, the text shall be regarded as carried unless a motion of censure, tabled within the succeeding twenty-four hours, is passed under the conditions laid down in the previous paragraph. As per Article 49, the three ways in which the government's responsibility to the Parliament can be ensured are:
>
> (i) The government commits itself before the lower chamber for its programme or a statement of general policy. If this meets with rejection (by a majority vote), the government resigns.
>
> (ii) The Assembly can move a motion of censure and if that passes, the government needs to resign.
>
> (iii) The Government commits itself with respect to a bill; the bill is thought to be carried unless a censure motion has been tabled within a specific time period (24 Hours).

The powers of the executive can also be checked by the Parliament using means like commissions, questions, resolutions, and debates over the government Bills. The Parliament may also threaten not to pass the budget. Although the President is not accountable to Parliament according to the French system, he can be impeached by it for acts of high treason. In such a situation, the President must be tried by High Court of Justice. The High Court of Justice comprises an equal number of members from the Senate and the National Assembly.

- **Financial powers:** The French parliament controls the finances of the republic. This can be seen if one looks at the process of passing the budget in Parliament. After preparing the budget, the government tables it in the Assembly and then the Senate. Both houses must agree for the budget to be passed as both the Senate and the Assembly enjoy equal powers. If both houses do not agree, the government adopts a procedure underlined in Article 45 of the Constitution. The government may also use Article 47 in order to prevent the Assembly from using delaying tactics. According to Article 47, if the first reading of the Bill does not happen within forty days, then the government has to refer it to the Senate, which must come to a decision within a fortnight. The government may go in for an ordinance if the Budget bill is not voted for 70 days. If the budget is not going to be presented on time, the Parliament can be asked to authorize taxation by decree and authorize expenditure in the respect of any estimates previously accepted by the Assembly.

  At the same time it should be noted that no amendment can be introduced by the Parliament that proposes to increase the expenditure or decrease the revenue. However, the Parliament can propose cuts to the expenditure. Since the Parliament has the right to completely reject the bill, usually the government of the day grants concessions to the Parliament to help pass the bill. The Audit Court, also known as *Cour des Comptes*, assists the Parliament and the government in supervising the implementation of the finance acts.

- **Electoral powers:** As you learned, the High Court of Justice comprises an equal number of members from the Senate and the National Assembly. Moreover, three members each are appointed by the National Assembly and Senate's presidents towards the Constitutional Council. In addition, the Assemblies of Community states as well as the French parliament choose the members of the Senate of the Community.
- **Other powers:** The other powers of the Parliament are as follows:
  - o The government requires the approval of Parliament to declare war.
  - o The government can declare martial law unilaterally for a period of 12 days beyond which any extension requires the approval of Parliament.

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- o Any sort of international treaty or obligation that implies a financial commitment on the part of the republic can only take effect after Parliamentary approval.
- o Moreover, any modification to legislation, or relating to the status of persons, or entailing a cession, exchange or adjunction of territory, may be ratified or approved only by acts of the Parliament.
- o The French Parliament has the right to create army territorial entities other than communes, departments and overseas territories.
- o Any Constitutional amendment can only take effect after the approval of Parliament.
- o The French Parliament also has the power to set up commissions of inquiry for investigation purposes.

Parliamentary Sovereignty and Some Limitations

The 1958 French Constitution distinguishes between the legislative powers of the Parliament and the regulatory powers of the Government. You have already studied the legislative powers of the parliament. The government's regulatory powers are provided under Article 37 of the Constitution. According to Article 37, 'matters other than those that fall within the sphere of legislation shall be determined by regulation.' This article has been the cause of disputes as to the purview of legislation and regulation. Whenever disputes arise, the opinion of the Constitutional Council is sought.

Article 38 of the French Constitution provides the government the right to ask Parliament to authorize its programme, for a limited period, to take by ordinance measures normally within the legislative sphere. This Article then gives the executive the power to legislate despite the fact that the legislative sphere is specified for the Parliament by the Constitution. One cannot object to the provisions of Article 38 as the power to legislate on matters included in the legislative sphere is delegated to the government by the Parliament itself and because the government possessed the power of delegated legislation under the Third and Fourth Republics as well. However, the main point here is that till1958, the rule of parliamentary sovereignty was maintained in principle and delegated legislation was exceptional. The Parliament was itself the final judge of the extent and duration of special powers accorded to the governments to legislate by decree. Under the 1958 Constitution, the legislative sphere for the Parliament has been constitutionally limited, leaving all matters outside this sphere for legislation by decree.

The ways in which the sovereignty of the Parliament is restricted are listed below:

- o Article 59 and 60 bestows the Parliament with the right to supervise the regularity of elections and referenda and make decisions pertaining to irregularities.

- o According to Article 61 of the 1958 Constitution, the Constitutional Council has the right to make sure that laws conform with the Constitution of Parliamentary Standing Orders. This removes from Parliament, its traditional right to control its procedures.

The Constitutional Council has also been given the responsibility of resolving differences of opinion between Parliament and the executive and also to make sure both comply with the 1958 Constitution. This may result in the Parliament feeling that its rights to check the executive is being restricted. Along with these, there are other reasons for the curbing of Parliamentary sovereignty. Like the present day political scenario of India, in the multi-party French system of elections, no party gets an absolute majority in Parliament. Another point to be noted here is that in an age of expansion of state activity, some degree of delegated legislation is extremely critical. Since time is short, the Parliament does not have time to meet throughout the year and deliberate issues concerning the republic; the French parliament's legislative time has been reduced to five-and-a-half months. Thus, many local issues are delegated to local legislative bodies. Moreover, when the Parliament is in session, the government can refuse to debate or vote on its policy statements. Since an absolute majority is required for passing a censure motion, it becomes very difficult. Due to these reasons many consider that the 1958 Constitution has made the Parliament hollow of its role as a forum of grievances, as a check on administrative abuses and as a defender of civil liberties.

Procedure for Legislation

The legislative and the budgetary process was altered by the 1958 Constitution, compared to the previous constitutions. According to the 1958 Constitution, the government and private members of the House have the right to introduce bills in Parliament. Other than financial bills, any other bill can be introduced in any of the two Houses. Before the bills are sent to the House, they are considered in meetings of the Council of Ministers. It is important to note that if the government finds the bill to be contrary to the Constitution or outside the domain of the law or contrary to the delegation of authority granted in Article 38, then government does not introduce the bill and refers the matter to the Constitutional Council if there is a dispute between the executive and the president of the Assembly about the issue of inadmissibility. The Council must respond with its opinion within eight days. The president of the Assembly can also refer the bill to the Constitutional council. Whatever the opinion is of the Council must be accepted by both sides. If there are no problems with inadmissibility, the Bill is forwarded to the Standing Committee when it gets introduced in the House. The Assembly or the government can also request that the bill be referred to a special committee. The membership of a special committee does not exceed 30 members. The Standing Committee of the French Parliament can be of following nature:

- Committee on culture, family and social affairs

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- Foreign affairs committee
- Committee on National Defence and Armed forces
- Committee on economic affairs and planning
- Committee on constitutions, laws and general administration
- Committee on trade and economic production

The number of members of a Standing Committee in Parliament can be between 60 and 120 people depending on the committee. The number of people from party in a committee depends on the strength of the party in the committee; hence, the character of the Standing Committee is similar in nature to the party composition in the House. Each committee elects its president, three or four vice-presidents and two to four secretaries. After that, the committee scrutinizes the bill in detail. The meetings of the committee are recorded for the ministers, but they can participate in the meeting of the committee. The committee can ask any person for his or her views. After deliberation and consideration, the committee prepares its report and submits it to the Assembly. After the bill is sent back to the Assembly, it is deliberated and debated upon by the house. The opposition can propose amendments to the bill, which the government can accept or reject. After the debate has concluded, the bill is voted upon by the assembly. If the bill is passed, it goes to the second house for a similar process. After the bill is passed by the second house, it is sent to the President

Organic Laws

Organic laws are the laws that the Constitution provided for in order to complete a number of its provisions, and which were promulgated as ordinances during the transitional period when the government has full powers; or else it is those laws that provided for under Article 34 'to develop in detail and amplify' the legislative powers of the Parliament. The passage of organic laws is provided under Article 46 of the 1958 Constitution. According to Article 46, 'A Government or private member's bill shall be submitted for discussion and to a vote in the first Assembly in which it has been tabled not less than fifteen days after that tabling. The procedure of the Article 45 shall be applicable. Nevertheless, in the absence of agreement between the two Assemblies, a bill may be adopted by the National Assembly on final reading only by an absolute majority of its members. Organic Acts relating to the Senate must be passed in the same wording by the two Assemblies. Organic acts may be promulgated only after the Constitutional Council has declared them constitutional.'

Thus, it can be clearly seen that there are three critical differences between the passage of an organic law and an ordinary law:

- An entire fortnight needs to pass from the time the bill is tabled in the house before it can be debated.

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- If there is any disagreement between the two houses, the Assembly can override the objections of the Senate by voting for the organic law through a majority.
- Only if the Constitutional Council has declared that an organic law conforms with the Constitution can it be promulgated.

Organic laws basically deal with the following:

- The methodology to be employed for elections to the National Assembly and Senate
- The composition of the electoral college
- The length of Presidential term the the criteria for re-election
- The status of members of judiciary
- Composition of the High Council of judges
- The rules, procedures, as well as the composition of the Economic and Social Council
- Rules and operating procedure for the high court
- Organization and procedure of the Executive Council of the community

Finance Bill

The Budget of the French Republic, like in India, is prepared by the Minister of Finance. There are two parts to a budget, namely, revenue and expenditure. The Budget is placed before the National Assembly once the Finance Minister and the Council of Ministers have approved it. The budget is then sent to the Standing committee on finance, which discusses its provisions, and gives its decisions within 15 days. The Assembly has forty days to finish the reading of the first Bill. If the Assembly is not able to follow the deadline, then the government sends the Bill to the Senate to be read within fifteen days. If there is disagreement in the Houses, then Article 45 applies. In case even the Parliament fails to reach the decision within seventy days, then the government may apply its provisions by ordinance. If the government fails to introduce the Finance Bill in time for it to be promulgated by the beginning of the fiscal year, it may ask the Parliament for authority to collect taxes and make available the funds needed to provide for services already approved.

The Standing Committee on Finance plays the most important role during the procedure to pass the budget. Many consider it to be the strongest of the Committees as it approves the budget for every Ministry and provides for distribution of money. It can call any minister to justify the estimates for his ministry and may propose any reduction therein. The discussion over the budget in the Assembly is done ministry-wise. As mentioned before also, the members may not propose any amendment, which would reduce receipts or increase expenditure.

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Relations between the Two Houses

In accordance to the 1958 Constitution, the Senate is subordinate to the National Assembly. Although similar powers are provided both to the Assembly and to the Senate in the sense that both the houses are not permitted to override government bills, however, in case of disagreement between the two houses, it is the opinion of the National Assembly which goes through. This is because in case of disagreement, the government asks the National Assembly to make a final decision either on the Bill as returned by the Joint Committee, or on its own bill, with or without any amendments proposed by the Senate. The Senate is usually given fifteen days to announce a decision, whereas the National Assembly gets forty days. The senators do not have the right to convene the extraordinary session of Parliament, which is possessed by the members of the National Assembly. Perhaps the most important point here is that the government is not responsible to the Senate, but it is responsible to the National Assembly. A motion of censure can only be adopted by the National Assembly and not by the Senate. A Senate may give general policy statements disagreeing with the government. In such a situation, the government is under no obligation to listen to the Senate.

Check Your Progress

3. Name the two houses in the French Parliament.
4. Mention any two function of the President.
5. What are three critical differences between the passage of an organic law and an ordinary law?

5.4 FRENCH PRESIDENT

The French president is the head of state of the French Republic and is also the supreme commander of the French Armed Forces. He or she is elected through direct elections by universal suffrage, replacing the earlier method of Electoral College. As a result of various constitutional amendments, an individual can become the President of France for a period of two five year terms only. Earlier, a Presidential term lasted seven years, however, under the tenure of President Mitterrand, the term was reduced to five years. In order to be elected, a Presidential candidate has to secure an absolute majority of the votes cast. If the candidate is unable to secure votes in the first ballot, another ballot takes place on the next Sunday but one. The two candidates who manage to get the maximum number of votes are subjected to the second ballot.

The Constitutional Council is entrusted the task of supervising the Presidential elections as well as declaring the winner. In case the presidency falls vacant, the

President of the Senate becomes the temporary President until the President returns to office, or if the Constitutional Council declares the president to be permanently, until after the election of the new president. A new president must be elected in not less than twenty days and not more than thirty-five days from the day the post of the presidency fell vacant.

A. Powers of the French President

The powers of the French President are as follows:

Executive powers

With respect to executive powers, the French president:

(i) Appoints the Prime Minister and on the advice of the Prime Minister; nominates the other members of the government and also terminates their appointment

(ii) Is the Commander-in-Chief of the French Armed Forces and appoints people to civil and military posts

(iii) Appoints ambassadors and envoys to foreign countries and receives foreign ambassadors and envoys

(iv) Appoints the president and three members of the Constitutional Council

(v) Negotiates and ratifies international treaties

(vi) Presides over the Council of Ministers

Legislative powers

With respect to legislative powers, the French president:

(i) Promulgates laws within fifteen days following the transmission to the government of the said laws as finally adopted

(ii) Can ask the Parliament to reconsider a law or certain articles within a law before the expiry of the time-limit

(iii) Communicates with the two houses of the Parliament through speeches that cannot be debated

(iv) Can summon the Parliament for an extraordinary session in which it meets *ipso jure*

(v) Signs the ordinances and orders decided upon in the Council of Ministers

(vi) Has the power to dissolve the National Assembly after consulting with the Prime Minister

Judicial powers

With respect to judicial powers, the French President:

(i) Can grant pardon to any convicted criminal

(ii) Presides over the High Council of Judges to which he nominates nine members

(iii) Guarantees the independence of the judiciary

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Emergency powers

The Emergency powers of the French President are provided under Article 16 of the 1958 Constitution. With respect to the emergency powers:

(i) The French President alone can decide when an emergency exists and what measures are to be taken; he only has to consult the PM, the Presidents of the Assemblies and the Constitutional Court

(ii) The Parliament cannot be dissolved during an emergency; at the same time, it cannot pass any measures restricting the power of the President during an emergency

(iii) The President alone can decide when to end an emergency

As it can be seen, there are no real safeguards given in the Constitution against the abuse of the emergency powers by the President. Along with the rights stated above, the French President also has the right to interpret the Constitution in a way that he or she sees fit. This right is provided to him under Article 5 of the 1958 Constitution.

B. Position of the President

As you now know, the French President is the head of state of the French republic and the commander of the French armed forces. The entire gamut of the powers that the constitution provides the President has been listed above. Along with those powers, the president is politically not responsible for acts carried out by him in pursuance of his functions except in the case of high treason. Unlike the President in the United States, the French President is not restrained by a Congress or any other legislature or a judicial review. Thus, he is neither accountable to the legislature nor can he be removed by it. All of these measures were essentially formulated by General de Gaulle to bring order and stability to the French state during the time of the French Algerian crises. Many in France criticized these measures, calling them 'quasi-monarchial' and 'tailor made for General de Gaulle'. However, even after General de Gaulle left office in 1969, these measures were retained and continue to be in existence. Thus, the French President is not a nominal figure head of the republic like the Indian President, rather, the authority and the prestige of the President is onerous and his powers are enormous. According to Campbell and Chapman, 'The (French) President's influence will depend on the personality of the man and on what type of men Parliament will accept as ministers. If the articles regarding the Cabinet and Parliament are applied, the President will neither be directing force once advocated by de Gaulle nor the directing force feared by some critics of constitution.'

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5.5 THE PRIME MINISTER

The French Prime Minister is the head of the government in France as well as being the head of the Council of Ministers. As you already know, the 1958 French Constitution is partly Presidential and partly Parliamentary. Thus the position and prestige of the Prime Ministers lies someway in-between. According to Article8 of the Constitution, the President may select a Prime Minister of his choice. The Prime Minister need not be a member of the National Assembly. However, the person chosen to be PM must enjoy majority support in Parliament. Thus, only individuals from the majority party in Parliament is chosen to be PM. The President cannot dismiss the PM once he is appointed unless the President chooses to present his government's resignation. The only way for the PM to be removed is if he loses majority support in the Assembly. As head of the government, the French Prime Minister is responsible for handling the day-today affairs of the French administration.

Powers and Position of the French Prime Minister

The foremost power of the French Prime Minister is that he recommends the individuals who the President appoints as Council of Ministers. These Ministers cannot be members of the National Assembly. Article 21 of the 1958 French Constitution provides that, 'The Prime Minister shall direct the conduct of government affairs. He shall be responsible for national defence. He shall ensure the implementation of legislation. Subject to the provisions of Article 13, he shall exercise the power to make regulations and to make appointments to civil and military posts. He may delegate certain of his powers to Ministers. Should the occasions arise, he shall deputize for the President of the Republic as the Chairman of the councils and committees provided for under Article 15. On an exceptional basis, he may deputize for him as the chairman of a meeting of the Council of Ministers by explicit delegation and for a specific agenda.' It is the duty of the French Prime Minister to defend the programs of their ministry, and make budgetary choices. The extent to which those decisions lie with the Prime Minister or President depends upon whether they are of the same party.

Historically it has been seen that if the President and the Prime Minister are from the same party, the PM acts like the deputy of the President. For example, all the Prime Ministers during Charles de Gaulle's tenure were mere deputies who regarded themselves as his appointees and were always at his beck and call. It was de Gaulle who dictated French policy, especially in regard to the Algerian crisis and foreign affairs. On the other hand, if there is a cohabitation, that is, if the President and the Prime Minister are from different parties then the responsibilities of the PM become akin to those of the British PM. However, even then, the PM is subordinate to the President. The Council of Ministers is presided over by the president and not the prime minister. The Prime Minister cannot shuffle his cabinet

without the explicit permission of the President. Thus, the policy of the French Republic is actually determined by the president. In1992, the then French PM Edith Cresson was forced to tender her resignation on the account the defeats that the socialist party suffered in regional elections of that year. In her resignation speech, she expressed her bitterness at the restrictions placed on the Prime Minister. She was not allowed to change her cabinet to get rid of incompetent ministers despite many pleadings with the President. Looking at the above quoted examples, it should be clear to everyone that the powers of the French Prime Minister pale into insignificance one when compares it to the powers given to his counterparts in Britain and India.

5.6 COUNCIL OF MINISTERS

The French Council of Ministers or Executive Council (*Conseils des Ministres*) constitutes the most important administration members of the Prime Minister's Cabinet. The French term *gouvernement* generally means the 'administration', but it also refers to the cabinet in the narrow sense of the term.

Composition

After the President of France, the next in the order of importance are the Council of Ministers. The Council of Ministers comprises of the Prime Minister and other Ministers of various departments. The number of Council of Ministers has not being fixed by the Constitution and varies from government to government. As stated above, the President chooses the Prime Minister. However, the person chosen to be Prime Minister must have the backing of the majority in Parliament. The President, in consultation with the Prime Minister, selects the Council of Ministers. The Council of Ministers can be dismissed by the President on the advice of the Prime Minister.

Functions of the Council of Ministers

The legislative functions of the Council of Ministers are provided under Article 38of the 1958 Constitution. According to Article 38, 'The Government may, in order to carry out its programme, ask parliament for authorization to take through ordinances during a limited period, measures that are normally within the domain of law. Government bills shall be discussed in the Council of Ministers after consultation with the Council of State and shall be filled with the secretariat of one of the two assemblies.'

Unlike the President of France, the Council of Ministers are accountable to Parliament. As you learned above, if the Assembly passes a censure motion against the Council of Ministers, they have to resign. Moreover, all Council of Ministers have to answers questions posed to them by the members of the Federal Assembly. These questions are referred to as the government questions (*questions au*

gouvernement). Council of Ministers are also needed to attend Parliamentary sessions when discussions related to their department are taking place. In addition, no minister can recommend any legislation without the backing of Parliament; however, the French PM can sanction statutory instruments known as orders-in-council, that is, government orders with statutory force. According to convention, Council of Ministers can be classified by rank into three categories. These are as follows:

- **Ministers:** Highest ranking members of government.
- **Deputy ministers:** They assist Ministers according to their expertise and portfolio.
- **Secretaries of State:** Give assistance to Ministers in relatively unimportant areas and occasionally attend sessions of the Council of Ministers. Along with these three ranks, there is another rank that is given to some ministers of importance as a purely honourary title. These ministers are known as **Ministers of State**.

  The Cabinet decides the agenda to be taken up by the houses of the Parliament. Parliamentary sessions are conducted so that they can suggest laws and amendments during these sessions. The cabinet also has at their disposal a host of methods that can be used to increase the pace of parliamentary deliberations. The President chairs the sessions of the Council of Ministers that usually take place on Wednesday mornings at the Élysée Palace. Along with these functions, the Council of Ministers also have other executive and financial functions.

Check Your Progress

6. List any two executive power enjoyed by the President.
7. What are the emergency powers of the French President?
8. Who elects the Council of Ministers?
9. When and where do the sessions of the Council of Ministers take place?

5.7 ANSWERS TO CHECK YOUR PROGRESS QUESTIONS

1. The French Constitution is considered a rigid constitution as it is extremely difficult to revise the French Constitution that was formulated in 1958. The Republican nature of the French Constitution is not subject to any type of revision.
2. The Advisory Council, also known as the Economic and Social Council, gives its opinion on the government bills, drafts ordinances, orders and private members' bill submitted to it by the government.

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3. The French Parliament comprises two houses, namely, the Senate (the upper chamber) and the National Assembly (the lower chamber).
4. A president performs the same functions as that of a chairman, that is:
   (i) Regulating business in the House
   (ii) Putting up Bills to vote and declaring results
5. There are three critical differences between the passage of an organic law and an ordinary law:
   - o An entire fortnight needs to pass from the time the bill is tabled in the house before it can be debated.
   - o If there is any disagreement between the two houses, the Assembly can override the objections of the Senate by voting for the organic law through a majority.
   - o Only if the Constitutional Council has declared that an organic law conforms with the Constitution can it be promulgated.
6. With respect to executive powers, the French president:
   (i) Appoints the Prime Minister and on the advice of the Prime Minister; nominates the other members of the government and also terminates their appointment
   (ii) Is the Commander-in-Chief of the French Armed Forces and appoints people to civil and military posts
7. With respect to the emergency powers:
   (i) The French President alone can decide when an emergency exists and what measures are to be taken; he only has to consult the PM, the Presidents of the Assemblies and the Constitutional Court
   (ii) The Parliament cannot be dissolved during an emergency; at the same time, it cannot pass any measures restricting the power of the President during an emergency
   (iii) The President alone can decide when to end an emergency
8. The President, in consultation with the Prime Minister, selects the Council of Ministers.
9. The President chairs the sessions of the Council of Ministers that usually take place on Wednesday mornings at the Élysée Palace.

5.8 SUMMARY

- The 1958 Constitution provided for the setting up an advisory body called the Economic and Social Council. Primarily a technical advisor of the government, the Economic and Social Council gives its opinion on the

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government bills, drafts ordinances, orders and private members' bill submitted to it by the government.

- The Constitution of France contains the main laws that pertain to Fundamental Rights, and these are applicable to citizens as well as non-citizens. The fundamental rights of French citizens are derived from the Declaration of the Rights of Man and of the Citizen, one of the fundamental documents of the French Revolution. This declaration established fundamental rights of not only French citizens but also acknowledged the rights of all human beings without exception.
- The French Parliament comprises two houses, namely, the Senate (the upper chamber) and the National Assembly (the lower chamber). The deputes of the lower chamber are elected through direct suffrage while the deputies of the upper chamber are selected through indirect suffrage.
- The rights and benefits enjoyed by the members of Parliament are cited in the Article 26 of the Constitution. According to one such privilege, no member can be arrested, detained, interrogated or subjected to a trial based on opinions expressed or votes cast in the course of their duties.
- The Parliaments meets two times in a year, once on the 2nd of April to discuss the budget and then again on the 2nd of October to discuss the legislative programme. If the prime minister ever puts in a request for a special session, the president of the Republic is authorized to conduct such a session.
- The oldest member presides over the first meeting of the session. In this session, the President of the Assembly is elected. Earlier, the President was elected every year. However, the tenure has now been reduced to the duration of the Assembly.
- The French parliament controls the finances of the republic. This can be seen if one looks at the process of passing the budget in Parliament. After preparing the budget, the government tables it in the Assembly and then the Senate. Both houses must agree for the budget to be passed as both the Senate and the Assembly enjoy equal powers.
- The Budget of the French Republic, like in India, is prepared by the Minister of Finance. There are two parts to a budget, namely, revenue and expenditure. The Budget is placed before the National Assembly once the Finance Minister and the Council of Ministers have approved it.
- The French president is the head of state of the French Republic and is also the supreme commander of the French Armed Forces. He or she is elected through direct elections by universal suffrage, replacing the earlier method of Electoral College.

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- Unlike the President in the United States, the French President is not restrained by a Congress or any other legislature or a judicial review. Thus, he is neither accountable to the legislature nor can he be removed by it.
- The French Prime Minister is the head of the government in France as well as being the head of the Council of Ministers. As head of the government, the French Prime Minister is responsible for handling the day-today affairs of the French administration.
- The foremost power of the French Prime Minister is that he recommends the individuals who the President appoints as Council of Ministers. These Ministers cannot be members of the National Assembly.
- After the President of France, the next in the order of importance are the Council of Ministers. The Council of Ministers comprises of the Prime Minister and other Ministers of various departments. The President, in consultation with the Prime Minister, selects the Council of Ministers. Unlike the President of France, the Council of Ministers are accountable to Parliament.

5.9 KEY WORDS

- **Referendum:** A referendum is a direct and universal vote in which an entire electorate is invited to vote on a particular proposal. This can result in the adoption of a new policy or specific law.
- **Suffrage:** Suffrage is the right to vote in public or political elections. In France, the President is elected through direct elections by universal suffrage.
- **Ordinance:** Ordinance refers to a rule or law made by the government or the authority.
- **Organic laws**: These are the laws that the Constitution provided for in order to complete a number of its provisions, and which were promulgated as ordinances during the transitional period when the government has full powers; or else it is those laws that provided for under Article 34 ‘to develop in detail and amplify’ the legislative powers of the Parliament.

5.10 SELF ASSESSMENT QUESTIONS AND EXERCISES

Short-Answer Questions

1. What is the function of the Constitutional Council?
2. What are the rights and benefits enjoyed by the Members of Parliament?
3. Mention any two function of the President.

4. What are the legislative powers enjoyed by the French President?
5. What are the functions of the Council of Ministers?

Long-Answer Questions

1. Analyse the salient features of the French Constitution.
2. Discuss the Fundamental Rights in the French Constitution.
3. Discuss the powers of the French Prime Minister.
4. Examine the powers and functions of the French President.

5.11 FURTHER READINGS

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UNIT 6 FRENCH CIVIL SERVICE, ADMINISTRATIVE COURTS AND LOCAL GOVERNMENT

Structure

6.0 Introduction
6.1 Objectives
6.2 French Civil Service
6.3 Administrative Courts
6.4 Local Government
6.5 Answers to Check Your Progress Questions
6.6 Summary
6.7 Key Words
6.8 Self Assessment Questions and Exercises
6.9 Further Readings

6.0 INTRODUCTION

In this unit, you will learn about the rights and obligations of the French Civil Service. The unit will also highlight the selection and appraisal process of the civil servants in France. Further on in the unit, the three types of administrative courts will also be discussed in detail. The unit will also delve into the three tiers of local government, namely, commune, department and regions.

6.1 OBJECTIVES

After going through this unit, you will be able to:

- Understand the responsibilities of the French Civil Service
- Discuss the role of the administrative court of France
- Know about the three tiers of local government

6.2 FRENCH CIVIL SERVICE

France has three branches of the civil service (central government, local government and hospital). Each branch is governed by a specific set of provisions, which are applied nationwide. The General Regulations for all three branches were unified by the Law of 13 July 1983 (Title I – General Regulations), which however, defined and maintained the specificities of each branch.

Members of the judiciary and the armed forces are governed by special regulations.

Statistics: The French civil service employs 5.3 million people (21.1% of the active population) and is organised into 3 Levels: State Civil Service, with 2.484 million employees (47% of the total) distributed into Ministries (2.,193 m.) and Public Administrative Establishments (0.292 m); Territorial Civil Service, (1.748 m. which is equivalent to 33% of the total) and the Hospital Civil Service, (over 1 m., representing 20% of the total), of which 94% work in hospitals and 6% in homes and other offices.

By Services

- At a Central Level, the average age of employees is 43.8 years old; women represent 50.1% of employees and 16,1% of senior positions.
- At a Territorial Level: Age: 44.4 years old; Women: 61% and 18% of senior positions;
- At a Hospital Level: Age: 42.9 years old; Women: 76.4% and 37.9% of senior positions.

For the three branch of the civil service, disabled represent 4.5% of the employees.

Ratio of civil servants/inhabitants: 70.9/1,000 (including overseas). In the Central Service, 17.4% of women work part-time, compared with 2.9% of men.

Retirement: The average retirement age in 2008 was 59 years old for the central government civil servants. Between 2006 and 2007, 4.5% of civil servants enjoyed geographic mobility, whilst 3.3% had professional mobility with a change in group. 6.5% changed administrative organization and 0.3% had structural mobility with organization transfer.

The Civil Service is divided into 3 Categories according to the position:

- Category A (directors, 29.7%),
- Category B (intermediate professionals, 24.3%) and
- Category C (employees and operators, 46%).

The Ministry for the Budget, Public Accounts, Civil Service and State Reform is responsible for the civil service, human resource management and the salary policy.

Rights, obligations, principles and values

The main rights of civil servants are: the right to strike, join a union, ongoing training, participation, remuneration, protection and freedom of opinion (whether political, trade-union-related, philosophical or religious). Their main obligations are: professional confidentiality, professional discretion and informing the public, performing the tasks entrusted to them, following orders from superiors, etc.

Career-based system and training

Although public employees can be recruited on a contractual basis (16%), they are normally recruited via selection processes. Training is provided at on-going training centres and others that specialise in international cooperation: National School of Administration (ENA), Regional Administration Institutes that offer training for standard government posts and the Centre for European Studies (Strasbourg). There are also ministerial centres that provide training for specific posts.

The civil servant assessment procedure is set out in Decree 682, on the classification and promotion of civil servants in administrative scales. Assessment is carried out by the direct hierarchical superior and is based on performance as well as professional development prospects.

The civil servant is informed of the result of the assessment. It is carried out in each Ministry, in accordance with the functions and corps to be managed, whereby it may adopt its own classification system in agreement with trade unions. Classification is the responsibility of the Head of Service. The Decree provides a regulation defining the procedure to follow, classifications, notes, etc. for the specific characteristics of each Ministry.

The assessment may be annual or twice yearly and is based on the rules established for each administration. It may be reviewed on the civil servant's request, who is also entitled to appeal to the administrative jurisdiction.

The importance of seniority in career development has been reduced in favour of merit. The result of the assessment serves for career advancement by means of a change in level or grade. Each grade is divided into levels and it is possible to go up a level in the same grade. There are 3 types of grade advancement: By authority appointment, by examination, by competition.

Remuneration

Remuneration is based on the employee's grade and the rank of the position occupied, or in other words, for belonging to a corps and the rank within each corps. The rank is linked to a base remuneration according to the civil servant's position on a common scale. In addition to grade, rank and position, remuneration consists of compensation for residence, a family supplement and legal compensation. Therefore, the main remuneration is determined by a civil servant's grade within his/her corps and a rank associated to a gross index or classification index, to which a salary index that varies between 280 and 821 is assigned. Annual salary is calculated by multiplying this salary index by a percentage.

A harmonised, streamlined and more individualised bonus system, known as the 'Function and Performance Bonus' is currently being introduced, in which remuneration has a functional part that takes account of the civil servant's responsibilities, and another that covers a person's individual performance, which is evaluated in individual interviews.

Social dialogue and system of representation

In theory, trade unions do not have the legal authority to initiate collective bargaining except for salary increases. In reality, the practice of bargaining has grown and deepened over the past ten years. During negotiations, the government is represented by the Ministry for the Civil Service (central government civil service), the Ministry for Health (hospital civil service) and the Ministry for Local Authorities (local government civil service). Employee representatives come from the eight major trade unions. Subjects discussed include working conditions, health, remuneration, etc. Although the agreements reached are not binding, the political weight that they represent is definite. The Government may act unilaterally in the case of failure to reach agreement.

Within the framework of social dialogue reform, in 2008, the six most representative trade unions:

- French Democratic Confederation of Labour,
- French Confederation of Christian Workers,
- Union of Executives,
- General Confederation of Labour,
- General Confederation of Labour - Force Ouvrière,
- National Union of Autonomous Unions

signed the 'Bercy Agreements' in order to strengthen the role of bargaining and social dialogue between civil service branches and between ministries, underscore the legitimacy of technical committees and advisory bodies, and reinforce the rights and means for trade union action.

Collective bargaining is centralised on a national level; and includes salary increases within the limits set out in the Budget by the Ministry for Finance. It is characterised by the obligation to consultation prior to decision-making. According to the recent Bercy Agreement, a pact between trade unions and employers is considered to be valid if 2 trade unions, with a minimum of 20% of the votes of the entire union representation, sign it and it is not rejected by any organization that represents a majority of the votes.

Senior civil servants

In France, they are not called Senior Civil Servants but rather High Level Civil Servants. They enjoy special conditions that are different to the rest of the civil servants, but they do not have a legally defined status. However, high level positions are exceptional and have a special social status, and in particular, they enjoy special conditions in relation to their recruitment and entry, assignation of posts and benefits. The French employment system is career-based and seeks a coherent public service.

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POSITIONS TO BE OCCUPIED BY SCS (SUMMARY TABLE)

FUNCTIONAL LEVEL	TITLE	PART OF SCS?
1st Level	Secretary General of the Ministry	Yes
2nd Level	Director-General	Yes
3rd Level	Director	Yes
4th Level	Deputy Director	In certain cases
5th Level	Head of Service	In certain cases
6th Level	Deputy Head of Service	In certain cases

Fig. 6.1 *Senior civil servants*

Civil service recruitment remains essentially centralised. Civil servants are mainly recruited at the beginning of their careers, through highly competitive examinations and training, through special institutes. The most important schools (grandes écoles) are: National Administration School (ENA) and the Polytechnic School (EP). Entrants to grandes écoles immediately become salaried civil servants and the top 20% (ENA) and top 25% (EP) are appointed to the most prestigious grands corps.

ENA is the principal means for accessing the high-level civil service functions. However, there is also the possibility of becoming a Civil Administrator through specific recruitment systems opened to all civil servants throughout their career (known as Tour extérieur). There are also specific examinations for technical corps (Polytechnic School) and specific competitions are organised by Ministries such as Foreign affairs, in order to recruit agents with specific competencies.

Entry Recruitment

ENA: At least a higher education diploma (or similar) and an examination. The proportion of posts via external examination is 50%, 40% internally and 10% from a third channel open to candidates from the private sector or those who have an elected mandate. EP: Secondary diploma, two years of preparatory classes and a competitive examination.

There are discretionary appointments by the Government (Prefects, Directors, Ambassadors, etc.) without a fixed term contract and revocable at any time, and classical management appointments with a defined duration (three years, renewable once). For discretionary appointments by the Government, a formalised procedure does not exist; for other appointments, there is a very limited procedure (call for application, nomination, validation by the Prime Minister and the Minister concerned and consultation with the General Directorate for Administration and Civil Service).

Senior Civil Servants are recruited by a more centralised process than general civil servants. Performance appraisal takes place annually. The Assessment interview

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is held between the Programme Manager and the Senior Civil Servant, or at the very top level. There are three core elements in the appraisal: Indicator-based objectives; operational quality of the service and the capacity of the Director and the assessment carried out by the hierarchical leaders. The appraisal defines the amount of the performance-based pay, which can be up to a maximum of 20% of the total salary.

The ENA and EP carry out training at the entry level and subsequently (senior positions receive training within six months of their appointment). Leadership training for senior civil servants consists of training in negotiation, communication skills, public governance, etc.

As for remuneration, Directors and Director-Generals have performance-related pay. Civil servants' remuneration is based on three components: basic salary assigned to each corps. Two additional levels: At the inter-ministerial level: a fixed premium for productivity or the percentage of the base salaries of the different pay grades. At ministerial level: an efficiency premium is used, which is also defined as a percentage of the base salaries of the different pay grades.

Part-time work for SCS is allowed by Law, but in practice, like tele-working, it is not really common practice, arising only for jurisdictional functions. SCS have more free days to compensate for the flat-rate time worked, but in practice many executives are unable to take their days off. For members of the grands corps there is mobility between ministries and various positions within the administrative system. By means of temporary assignments, they can be loaned to other ministries. They are permitted to take leaves of absence to hold political office or work in the private sector while maintaining their benefits such as rate of pay and level of seniority upon their return.

Statistics: In France there are over 5000 senior civil servants in the Central Administration (around 16% of which are female). Since 2005, career initiatives and the elimination of the 50 years old age limit makes it easier to recruit senior executives via the "tour extérieur". This procedure, which is open to Category A civil servants with at least eight years of service, is specifically designed to take account of professional experience. Mobility obstacles between the three branches of the civil service have also been removed so that local government and hospital civil servants seconded into the civil administrators' corps may move there permanently after 2 years of service.

Recent reforms and prospects

Several reform projects have been initiated, including ones dealing with individualised remuneration, mobility, evaluation, training and diversity. A number of these are part of the roadmap for the 'Public Service 2012 Pact'. They are also part of the wider General Review of Public Policies, specifically in relation to human resources.

The 2008 reforms mentioned in the social dialogue and other reforms approved by the Public Policy Modernisation Council to improve the quality of public services and meet the objective of replacing only one out of two retiring civil servants between 2009 and 2011 to reduce the size of the public service have also been initiated.

Other reforms affect the modernisation of the 15 French Ministries to improve their efficiency, which have already been culminated in the Ministries of Defence, Sustainable Development and the Interior. A series of inter-departmental measures include multi-year budgets, modernisation of the State's territorial organisation, streamlining internal procedures, modernising human resource management, modernising the State's support functions (payroll, State purchases), and a 'zero red tape' policy.

Check Your Progress

1. What are the rights of civil servants?
2. When was the Bercy Agreement signed?
3. List some of the prominent trade unions in France.

6.3 ADMINISTRATIVE COURTS

Administrative court refers to any type of court which specializes in administrative law, more specifically in disputes relating to exercise of public power. The role of the administrative court is to ensure that the official acts are in accordance with the law. These courts are considered to be different from general courts.

Significantly, administrative acts are binding without the consent of the involved party. Usually, the contract between the authority and private persons falls under the purview of the general court system. The following issues are dealt with in administrative courts:

- taxation
- dispensation of monetary benefits
- environmental licenses
- building inspection
- child custody
- involuntary commitment
- immigration decisions
- summary public payments (apart from fines imposed by general courts)

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Administrative Courts in France

These courts deal with lawsuits relating to the French state, local authorities or public authorities ruled by public law. For instance, an administrative court will handle litigation with the mayor's office on the grant of a building license. In stark contrast to Germany, France does not have a specific court for tax-related matters.

The administrative courts in France are of three types. These are:

- First instance courts – administrative courts (*Tribunal administratif*)
- Intermediate appellate courts – administrative courts of appeal (*Cour administrative d'appel*)
- Courts of last resort – the Council of State (*Conseil d'Etat*)

Constitutional principles protect the jurisdiction and independence of the administrative justice system. According to these rules, only the administrative court can quash or revive decisions of the State, local authorities or public bodies operating under their control. A legal body can also be ordered to pay compensation if their wrongful act leads to damage. The administrative court not only safeguards human rights and civil liberties but also acts as a guardian of the rule of law in relations between citizens and public authorities.

Three levels of the administrative justice system

The three tiers of the administrative justice system have been discussed below:

Administrative Tribunals / First Instance Courts

There are forty-two administrative tribunals in France. Of these, the thirty-one tribunals are in France and eleven are in overseas territories. The administrative tribunals heard over 183,000 cases in 2008. Notably, the expected average waiting period for decision reduced from 20 months in 2000 to less than 13 months.

Administrative Courts of Appeal / Appellate Courts

At least sixteen per cent of the judgments by administrative tribunals are appealed before the administrative courts of appeal. The eight appeal courts of Bordeaux, Douai, Lyon, Marseille, Nancy, Nantes, Paris and Versailles heard as many as 27,000 cases in 2008. The expected waiting period which was over three years in 2008 has reduced to less than thirteen months now. The members of the administrative tribunals and administrative courts of appeal collectively stand at over 1,000 judges; they form a single body and the members are recruited through ENA (the National School of Administration) and competitive examinations. The tenure and independence are guaranteed by this law. All individual concerns relating to careers, promotion, disciplining of judges, etc. will be handled by the High Council of Administrative Tribunals and Administrative Courts of Appeal which mainly consists of judges and qualified persons and chaired by the Vice President of the Conseil d'État. Apart from the judges, at least 1,300 clerks are responsible

for the smooth functioning of the administrative courts of appeal and the administrative tribunals. They ensure that the cases files are managed, applications are registered and forwarded, and the judgments are drafted.

The Conseil d'État / Supreme Administrative Court

The Conseil d'État is often known as a court of cassation. Almost three-quarters of the cases are appeals in cassation which are directed against the decisions of the administrative court of appeal, administrative tribunals, and even the specialized administrative bodies. However, the Conseil d' État is also a court of appeal. However, the jurisdiction of the Conseil d'État to hear appeals has slowly and gradually been transferred to the administrative courts of appeal. Today, it is only concerned with hearing disputes regarding municipal and cantonal elections. The Conseil d'État is also a court of first instance for dispute of special significance. Some of these disputes are regarding decrees, regulatory decisions by ministers, decisions by collegiate bodies with national jurisdiction, individual measures by officials appointed by decree of the President of the Republic – or whose geographical scope goes beyond the sphere of responsibility of an administrative tribunal. In addition to this, the Conseil d'État rules on disputes regarding elections, regional councils and the European Parliament. The Conseil d'État hears approximately 10,000 cases every year; the expected waiting period for decision has reduced to less than 10 months.

Specialised administrative tribunals

Apart from the administrative tribunals and the administrative courts of appeal, specialized courts such as the Cour des comptes (Court of Auditors), the Cour de discipline budgétaire et financière (Budget and Finance Disciplinary Court), the Commission centrale d'aide sociale (Central Commission of Social Aid), the Conseil supérieur de la magistrature (Supreme Judicial Council), which rules on disciplinary matters and disciplinary sections of professional bodies; and the Cour nationale du droit d'asile (National Court of Asylum), which rules on appeals against refusals to grant refugee status also gives judgments. The Conseil d'État serves as the court of cassation for these bodies.

6.4 LOCAL GOVERNMENT

In France there are three main tiers of local administration: the commune, department and region. These are both districts in which administrative decisions made at national level are carried out and local authorities with powers of their own. Legally speaking, a local authority is a public-law corporation with its own name, territory, budget, employees, etc. and has specific powers and a certain degree of autonomy vis-à-vis central government. In addition, there are France's overseas territories and regional bodies (collectivités territoriales) with special status (Paris, Marseille, Lyon, Corsica, Mayotte and Saint-Pierre-et-Miquelon).

The communes

The commune, which dates from 1789, is the lowest tier of the French administrative hierarchy. There are nearly 37,000 communes; many more than are found in the other countries of the European Union. In France the term commune is applied to all municipalities whatever their size – 80 per cent of them have fewer than 1,000 residents. This situation has led the government to encourage smaller communes to merge to form urban communities (communautés urbaines) or group together in associations of several communes (syndicats intercommunaux). In addition, the law of 6 February 1992 suggested new forms of co-operation to rationalise municipal administration by taking common interests into consideration. In reality, the closer links often go no further than pooling a few services and mergers are extremely rare, as both residents and local councillors often retain a strong sense of identity with their communes.

Like the department and region, the commune has a deliberative or decision-making body (the municipal council) and an executive (the Mayor), elected by the municipal council. The number of municipal councillors is proportional to the population. Elected for six years by direct universal suffrage, municipal councillors lay down guidelines for municipal policy, adopt the budget, manage municipal assets, notably primary school buildings and equipment, and decide how the municipal administration is to operate.

The Mayor has two hats, since he or she is both the commune's elected authority and the state's representative in it. As the commune's chief executive, the Mayor carries out the decisions of the municipal council. As the municipality's legal representative, the Mayor proposes and implements the budget, ensures the conservation and management of the commune's natural environment and built heritage and issues building permits. Mayors also have powers in their own right, being responsible for security and public health and having at their disposal the municipal administration, which they head.

As the state's representative, the Mayor is the registrar of births, marriages (at which he/she officiates) and deaths and is an officer of the police 'judiciaire' and so entitled to exercise special powers in connection with the repression of crime under the authority of the public prosecutor. Finally, he/she is responsible for various administrative tasks including publicising laws and regulations and drawing up the electoral register. Mayoral acts are unilateral administrative acts, generally orders, whose legality is subject to a control by the courts when they are issued by the Mayor as the commune's chief executive and to the approval of the Prefect (see below) to whom the Mayor is subordinate when acting in the capacity of the state's representative.

So the commune's own powers cover activities which affect its inhabitants' daily lives. Its economic and social brief, long limited to granting aid for job creation and helping needy families, has been broadened to enable it to play an important

role in combating unemployment and social exclusion and engage actively in economic restructuring and development of new activities.

The departments

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There are 100 departments in France, 96 in metropolitan France and four overseas (Martinique, Guadeloupe, Réunion and French Guiana). Established in 1789, the department has developed from a partially decentralised local authority to one with full powers of its own (since 1982). It has played a prominent role in the country's administrative and geographical organisation.

The department essentially has competence in health and social services, rural capital works, departmental roads, and the capital expenditure and running costs of colleges.

The Prefects

For almost 200 years (1800 to 1982), regional department Prefects held the executive power in the departments, but the law of March 1982 modified their powers. Appointed by the government, the Prefect is still the sole person empowered to act on the state's behalf in the department. Prefects represents the Prime Minister and all the members of the government, has authority over the state's external services in the department and ensures the administrative supervision of the department's local authorities.

However, the law of 2 March 1982 conferred executive authority for the department on the chairman of the general council. The general council is the department's decision-making organ. It is made up of general councillors elected for a six-year term in a two-ballot uninominal majority poll. Each department is divided into cantons (France has 3,500 cantons) which serve as the constituencies for the election. Elected by the councillors for a six-year term, the chairman prepares the council's debates and implements its decisions, including decisions on budgetary matters. He or she represents the department at the legal level, heads the department's staff and services and, finally, as the person in charge of running the department, exercises certain police powers in the areas of conservation and departmental highways (without prejudice to the powers of the Mayors and Prefect in these areas).

The regions

France has 26 regions, 22 in metropolitan France and four overseas. The latter have a special status, being at the same time departments and regions. Created in 1955 to provide a framework for regional town and country planning, the region became a local authority in 1982. Its main spheres of competence are planning, regional town and country planning, economic development, vocational training, and the building, equipment and running costs of schools (lycées).

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The decision-making organ is the regional council whose members are elected for six years. They are assisted by an economic and social committee, which is a consultative assembly made up of representatives of businesses, the professions, trade unions and other employees' organisations, regional voluntary organisations, etc. This committee must be consulted on the preparation and implementation of national plans, the establishment of the regional development plan and the major guidelines for the regional budget. The committee is also free to comment on any regional matter or, at the initiative of the regional council's chairman, any economic, social or cultural proposal. The regional council chairmen, elected by the councillors, are the region's executive authority. Their responsibilities are identical to those of the general council chairman in the areas within the region's sphere of competence.

So while basic principles and structures have not changed and there is a clear distinction between the spheres of competence of the different tiers, the decentralisation legislation did bring in some innovations, especially regarding supervision. Some degree of ex post facto monitoring of local government action is necessary in order to reconcile the fact that the authorities are self-governing with the need for coordinated action within a unitary state and ensure that the principle of equality of all citizens does not override the general interests of the nation as a whole.

The March 1982 law also made several changes concerning financing. Any transfer of state competence to a local authority must be accompanied by a transfer of resources (chiefly fiscal). In practice, local taxes have tended to rise. The reform also extended the responsibilities of the communal, departmental and regional accountants, giving them the status of chief accountant directly responsible to the treasury. Lastly, the 1982 law assigned to a new court, the regional audit chamber, responsibility for a posterior auditing of local authority accounts.

The process of decentralisation has profoundly altered local government in France. The new system is indisputably more costly than the old for the public purse and has led to some fragmentation of tasks and objectives, as local authorities act primarily in their own rather than the national interest. However, decentralisation is helping to ensure that tasks are carried out at the most appropriate level of responsibility in all sectors of public life, so bringing greater democracy to the country's administration and management.

Check Your Progress

4. What are the official decisions contested in administrative courts?
5. What are the three tiers in which administrative courts are divided in France?
6. List some of the specialized courts in France.
7. What is the term of municipal councillors?

6.5 ANSWERS TO CHECK YOUR PROGRESS QUESTIONS

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1. The main rights of civil servants are: the right to strike, join a union, ongoing training, participation, remuneration, protection and freedom of opinion (whether political, trade-union-related, philosophical or religious).
2. The Bercy agreement was signed in 2008.
3. Some of the prominent trade unions in France are French Democratic Confederation of Labour, French Confederation of Christian Workers, Union of Executives, General Confederation of Labour, General Confederation of Labour - Force Ouvrière, and National Union of Autonomous Unions
4. The official decisions contested in administrative courts are issues relating to taxation, dispensation of monetary benefits, environmental licenses, building inspection, child custody, involuntary commitment, immigration decisions, and summary public payments (other than fines imposed by general courts).
5. The administrative courts are divided into three tiers, namely, administrative tribunals, administrative courts of appeal, and Conseil d' État.
6. Some of the specialized courts are the Cour des comptes (Court of Auditors), the Cour de discipline budgétaire et financière (Budget and Finance Disciplinary Court), the Commission centrale d'aide sociale (Central Commission of Social Aid), the Conseil supérieur de la magistrature (Supreme Judicial Council), which rules on disciplinary matters and disciplinary sections of professional bodies; and the Cour nationale du droit d'asile (National Court of Asylum), which rules on appeals against refusals to grant refugee status also gives judgments.
7. The municipal councillors are elected for a period of six years by direct universal suffrage.

6.6 SUMMARY

- France has three branches of the civil service (central government, local government and hospital). Each branch is governed by a specific set of provisions, which are applied nationwide. Members of the judiciary and the armed forces are governed by special regulations.
- The main rights of civil servants are: the right to strike, join a union, ongoing training, participation, remuneration, protection and freedom of opinion (whether political, trade-union-related, philosophical or religious).
- Their main obligations are: professional confidentiality, professional discretion and informing the public, performing the tasks entrusted to them, following orders from superiors, etc.

NOTES

- Employees are selected through selection process. They are then given training at training centres, following which they are assessed. The assessment may be annual or twice yearly and is based on the rules established for each administration.
- Remuneration is based on the employee's grade and the rank of the position occupied, or in other words, for belonging to a corps and the rank within each corps. In addition to grade, rank and position, remuneration consists of compensation for residence, a family supplement and legal compensation.
- The Bercy Agreements was signed in 2008 to strengthen the role of bargaining and social dialogue between civil service branches and between ministries, underscore the legitimacy of technical committees and advisory bodies, and reinforce the rights and means for trade union action.
- In France, Senior Civil Servants are known as High Level Civil Servants. They enjoy special conditions that are different to the rest of the civil servants, but they do not have a legally defined status. Senior Civil Servants are recruited by a more centralised process than general civil servants. Performance appraisal takes place annually.
- Administrative court refers to any type of court which specializes in administrative law, more specifically in disputes relating to exercise of public power. The administrative courts are divided into three tiers, namely, administrative tribunals, administrative courts of appeal, and Conseil d' État.
- There are forty-two administrative tribunals in France. Of these, the thirty-one tribunals are in France and eleven are in overseas territories. At least sixteen per cent of the judgments by administrative tribunals are appealed before the administrative courts of appeal. The Conseil d'État is often known as a court of cassation. Almost three-quarters of the cases are appeals in cassation which are directed against the decisions of the administrative court of appeal, administrative tribunals, and even the specialized administrative bodies.
- Some of the specialized courts are the Cour des comptes (Court of Auditors), the Cour de discipline budgétaire et financière (Budget and Finance Disciplinary Court), the Commission centrale d'aide sociale (Central Commission of Social Aid), the Conseil supérieur de la magistrature (Supreme Judicial Council), which rules on disciplinary matters and disciplinary sections of professional bodies; and the Cour nationale du droit d'asile (National Court of Asylum), which rules on appeals against refusals to grant refugee status also gives judgments.
- In France there are three main tiers of local administration: the commune, department and region.
- The commune is the lowest tier of the French administrative hierarchy. Like the department and region, the commune has a deliberative or decision-

making body (the municipal council) and an executive (the Mayor), elected by the municipal council.

- There are 100 departments in France, 96 in metropolitan France and four overseas (Martinique, Guadeloupe, Réunion and French Guiana). The department essentially has competence in health and social services, rural capital works, departmental roads, and the capital expenditure and running costs of colleges.
- France has 26 regions, 22 in metropolitan France and four overseas. The latter have a special status, being at the same time departments and regions. Created in 1955 to provide a framework for regional town and country planning, the region became a local authority in 1982. Its main spheres of competence are planning, regional town and country planning, economic development, vocational training, and the building, equipment and running costs of schools (lycées).

6.7 KEY WORDS

- **Assessment:** Assessment is carried out by the direct hierarchical superior and is based on performance as well as professional development prospects.
- **Remuneration:** Remuneration is the financial compensation which is based on the employee's grade and the rank of the position occupied, or in other words, for belonging to a corps and the rank within each corps.
- **Trade Union:** A trade union refers to an association of workers who form a legal unit, which is also known as a 'bargaining unit'. They usually act as a legal representative of employees in matters concerning law or right.
- **Administrative court:** Administrative court refers to any type of court which specializes in administrative law, more specifically in disputes relating to exercise of public power.

6.8 SELF ASSESSMENT QUESTIONS AND EXERCISES

Short-Answer Questions

1. Write a short note on the selection and training of civil servants.
2. What is the basis for the remuneration of civil servants?
3. How did the Bercy Agreement bring about social dialogue reform?
4. Write a short note on the projects introduced to reform public services.
5. What is the role of the Conseil d'État?
6. What is the role of the mayor of a commune?

Long-Answer Questions

1. Analyse the selection and recruitment process of civil servants.
2. Discuss the three tiers of the administrative justice system.
3. Examine the three tiers of local administration in detail.

NOTES

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UNIT 7 ADMINISTRATIVE SYSTEM OF JAPAN

NOTES

Structure

7.0 Introduction
7.1 Objectives
7.2 Constitution and Government
7.2.1 Constitutional Monarchy
7.3 Prime Minister
7.4 Diet
7.5 Answers to Check Your Progress Questions
7.6 Summary
7.7 Key Words
7.8 Self Assessment Questions and Exercises
7.9 Further Readings

7.0 INTRODUCTION

This unit will focus on the Constitution of Japan and the distinctive features that differentiate it from the Constitutions of other countries. The unit will also highlight the role of the Emperor and the imperial family in the functioning of the government. Further on, the duties and responsibilities of the Prime Minister of Japan will also be delved into. The unit will also look at the two Houses of the National Diet and analyse its powers.

7.1 OBJECTIVES

After going through this unit, you will be able to:

- Understand the role of the Constitutional Monarchy in the government in Japan
- Discuss the responsibilities of the Prime Minister
- Analyse the structure and functions of the National Diet

7.2 CONSTITUTION AND GOVERNMENT

The Constitution of Japan was enacted on 3 May 1947. It became the fundamental law for a post-war Japan. The Constitution provides for a parliamentary form of government and ensures the fundamental rights of the citizens. The Emperor of Japan is considered as the symbol of the State and holds a ceremonial position under the sovereignty of the people.

The Constitution, which is also referred to as 'Post- War Constitution' or the 'Peace Constitution' was first drafted under the guidance of Supreme Commander of the Allied Forces (SCAP) during the Allied Occupation of Japan following the World War II. The Constitution has been reviewed and modified several times after its adoption. It introduced liberal democracy and replaced the previous quasi-absolute monarchy. Significantly, with the Article 9 of the Constitution, Japan renounced the right to wage war.

7.2.1 Constitutional Monarchy

The government of Japan is a constitutional monarchy; the Emperor holds a ceremonial role and his powers are limited. The Emperor is the Head of the State as well as the imperial family. The activities of the government are not affected by the position the Emperor holds in any way. The Imperial Throne is dynastic and the throne passes from father to son.

7.3 PRIME MINISTER

The executive branch of the government in Japan comprises the Prime Minister and the Cabinet of Ministers. The Prime Minister is the head of the executive branch as well as the Cabinet. The Prime Minister serves the office for a period of four years. The legislature nominates him to supervise the activities of the executive branch; the Prime Minister is also the head of the self-defence forces. Apart from this, the Prime Minister is responsible for presenting the bill to the legislature, signing laws and declaring an emergency in the country.

The Cabinet consists of the Ministers of State who are appointed by the Prime Minister. The members of the Cabinet can also be dismissed by the Prime Minister. The total numbers of the Ministers of State should not be more than fourteen and can be extended to nineteen in exceptional circumstances. The cabinet can resign in case the Diet's House of Representative cast a vote of no confidence or if the Prime Minister's post is vacant. The responsibilities of the Cabinet include conducting the affairs of the state, managing foreign affairs, administering civil service, finalizing the budget, etc.

The current Prime Minister of Japan is Shinzo Abe.

Role

The Prime Minister of Japan performs two kinds of roles, namely, constitutional roles and statutory roles.

Constitutional roles

Some of the constitutional roles of the Prime Minister have been discussed below.

The Prime Minister:

- Supervises the activities of the entire executive branch

- Presents the bills to the Diet on behalf of the Cabinet
- Ratifies laws and orders of the Cabinet
- Designates all the members of the Cabinet and can also dismiss them at any time.
- Can permit legal actions against the members of the Cabinet
- Should prepare reports on domestic and foreign relations to the Diet
- Should report to the Diet to give answers or explanations
- Can advise the Emperor to dissolve Diet's House of Representatives

Statutory roles

The statutory roles of the Prime Minister are given below. The Prime Minister:

- Presides over meetings of the Cabinet.
- Serves as the Commander-in-chief of the Japan Self-Defense Forces.
- Can override a court injunction against an administrative act upon showing of cause.

Unlike the other constitutional monarchies, the Prime Minister in Japan is both *de jure* and *de facto* chief executive. The constitutional monarchies of other countries recognize the monarch as the nominal and chief executive and acts on the advice of the Cabinet. On the other hand, the Constitution of Japan provides executive power to the Cabinet, which is led by the Prime Minister. The Prime Minister's is required for all laws and Cabinet orders. While in other parliamentary democracies, the ministers enjoy freedom of action, in Japan, the Cabinet is an extension of the Prime Minister.

7.4 DIET

The Constitution of Japan was promulgated on November 3, 1946, and went into effect on May 3, 1947. The first session of the National Diet was convened on May 20 of that year. That session marked the birth of the National Diet, replacing the Imperial Diet which had been created in 1890 under the Meiji Constitution and served for over 56 years.

Separation of Powers

The Constitution of Japan provides for the principle of the separation of powers. Three independent organs — the Diet, the Cabinet, and the Judiciary — are established, and each limits the power of the others through a system of checks and balances. This prevents the abuse of power and guarantees the rights and freedom of the people.

Status of the National Diet

Article 41 of the Constitution of Japan provides that "The Diet shall be the highest organ of State power, and shall be the sole law-making organ of the State."

Parliamentary Cabinet System

The Prime Minister is designated from among the Members of the Diet by a resolution of the Diet. The Cabinet is collectively responsible to the Diet in the exercise of executive power. If the House of Representatives passes a non-confidence resolution, either the House of Representatives must be dissolved or the Cabinet must resign en masse. Such a system where the Cabinet, or executive branch of government, is dependent on the support of the Diet, or legislative branch, to exist is called a parliamentary cabinet system.

Structure of the National Diet

The Diet consists of two Houses — the House of Representatives and the House of Councillors; each House is composed of elected Members, who represent all the people. Each House has plenary sittings and committees. In addition, each House has a Commission on the Constitution, a Board of Oversight and Review of Specially Designated Secrets, and a Deliberative Council on Political Ethics. The Diet as a whole also has the Judge Indictment Committee to institute removal proceedings against judges and the Judge Impeachment Court to try those judges.

Powers of the National Diet

The House of Representatives and the House of Councillors jointly exercise the powers of the National Diet through the passage of bills and measures by both Houses. The Diet's powers include

1. Enactment of laws,
2. Decisions regarding the budget and other matters related to national finances,
3. Decisions regarding approval for the conclusion of international treaties,
4. Designation of the Prime Minister, and
5. Initiation of amendments to the Constitution.

In the case where the House of Representatives and the House of Councillors make opposite decisions regarding a legislative bill or certain other measures, the Constitution recognizes the precedence of the House of Representatives and its collective decisions over the House of Councillors under certain conditions.

Powers of Each House

Each House independently exercises its own powers including

1. Autonomy of each House,

   Election of the House presiding officer, deputy presiding officer, and standing committee chairmen

NOTES

Establishment of special committees as necessary for each session

Establishment of rules pertaining to meeting procedures and internal discipline

2. Right to conduct investigations in relation to government,
3. Right to accept and vote on petitions,

and

Power unique to each House

1. Right of the House of Representatives to Pass a non-confidence resolution against the Cabinet
2. Convocation of the House of Councillors in emergency session.

Status of National Diet Members

National Diet Members receive a mandate from the people with whom resides sovereign power, and the Diet Members bear the important responsibility of deliberating government matters as representatives of all the people. Certain protection is given to National Diet Members so that they can perform these responsibilities. Except for cases prescribed by law, Diet Members cannot be apprehended when the Diet is in session and they cannot be held responsible outside of the House for speeches, discussions, or votes made in their House.

Check Your Progress

1. When was the Constitution of Japan enacted?
2. What is the term of office of a Prime Minister in Japan?
3. Who is the head of the self-defence forces in Japan?
4. What is the minimum strength of the Cabinet?
5. Who is the current Prime Minister of Japan?
6. Name the two Houses of the National Diet.

7.5 ANSWERS TO CHECK YOUR PROGRESS QUESTIONS

1. The Constitution of Japan was enacted on 3 May 1947.
2. The Prime Minister serves the office for a period of four years.
3. The Prime Minister is the head of the self-defence forces in Japan.
4. The total numbers of the Ministers of State should not be more than fourteen and can be extended to nineteen in exceptional circumstances.
5. The current Prime Minister of Japan is Shinzo Abe.

6. The Diet consists of two Houses: the House of Representatives and the House of Councillors.

7.6 SUMMARY

NOTES

- The Constitution of Japan was enacted on 3 May 1947. It became the fundamental law for a post-war Japan. The Constitution provides for a parliamentary form of government and ensures the fundamental rights of the citizens. The Emperor of Japan is considered as the symbol of the State and holds a ceremonial position under the sovereignty of the people.
- The executive branch of the government in Japan comprises the Prime Minister and the Cabinet of Ministers. The Prime Minister is the head of the executive branch as well as the Cabinet. The Prime Minister serves the office for a period of four years.
- The Cabinet consists of the Ministers of State who are appointed by the Prime Minister. The members of the Cabinet can also be dismissed by the Prime Minister. The total numbers of the Ministers of State should not be more than fourteen and can be extended to nineteen in exceptional circumstances.
- The Prime Minister of Japan performs two kinds of roles, namely, constitutional roles and statutory roles.
- The Constitution of Japan was promulgated on November 3, 1946, and went into effect on May 3, 1947. The first session of the National Diet was convened on May 20 of that year.
- The Constitution of Japan provides for the principle of the separation of powers. Three independent organs — the Diet, the Cabinet, and the Judiciary — are established, and each limits the power of the others through a system of checks and balances.
- The Diet consists of two Houses — the House of Representatives and the House of Councillors; each House is composed of elected Members, who represent all the people. The House of Representatives and the House of Councillors jointly exercise the powers of the National Diet through the passage of bills and measures by both Houses.

7.7 KEY WORDS

- **Peace Constitution**: The Constitution of Japan is also known as the 'Post-War Constitution' or 'Peace Constitution'. It was first drafted under the guidance of SCAP during the Allied Occupation of Japan following the World War II.

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- **No- Confidence Resolution**: A no-confidence resolution is a statement or vote that determines whether a person in a position of responsibility is no longer deemed fit to hold that position.
- **National Diet:** The National Diet is the highest organ of State power and the sole law-making organ in Japan. The Diet consists of two Houses — the House of Representatives and the House of Councillors.
- **Statutory Roles**: Statutory roles are roles that officials of a government organization must adhere to. The Prime Minister in Japan is required to fulfil the statutory role of presiding over meetings of the Cabinet, serve as the Supreme Commander-in-Chief of the Japan Self-Defence Forces, and also override a court injunction against an administrative act upon showing of cause.

7.8 SELF ASSESSMENT QUESTIONS AND EXERCISES

Short-Answer Questions

1. Why is Japan considered a constitutional monarchy?
2. What are the constitutional roles of the Prime Minister?
3. What are the statutory roles of the Prime Minister?
4. Write a short note on the structure of the National Diet.
5. What are the powers of the National Diet?

Long-Answer Questions

1. Discuss some of the prominent features of the Japanese Constitution.
2. Analyse the responsibilities of the Prime Minister in Japan.
3. Examine the powers of the two Houses of the National Diet.

7.9 FURTHER READINGS

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UNIT 8 ORGANIZATION OF JAPAN CENTRAL GOVERNMENT, CIVIL SERVICE AND CENTRAL PERSONNEL AGENCY

Structure

8.0 Introduction
8.1 Objectives
8.2 Organization of Japan Central Government
8.3 Civil Service
    8.3.1 Central Personnel Agency
8.4 Answers to Check Your Progress Questions
8.5 Summary
8.6 Key Words
8.7 Self Assessment Questions and Exercises
8.8 Further Readings

8.0 INTRODUCTION

In this unit, you will learn about the fundamental structure of the Japanese government and analyse the functions of its various components such as the Emperor, Diet, Cabinet, and the Judiciary. The unit will also delve into the recruitment of civil servants and discuss the role of the central personnel agency known as the National Personnel Agency (NPA). Further on, the unit will look at the role of the National Public Service Ethics Board.

8.1 OBJECTIVES

After going through this unit, you will be able to:

- Describe the structure of the Japanese government
- Discuss the recruitment and promotion of civil servants in Japan
- Analyse the role of the National Personnel Agency

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8.2 ORGANIZATION OF JAPAN CENTRAL GOVERNMENT

The fundamental structure of the Japanese government has been discussed below:

Emperor

The Emperor of Japan acts as the symbol of the country and of the unity of its people. He performs certain activities in accordance with the advice of the Cabinet. These activities are the announcement of the amendments of the Constitution, laws, orders of the Cabinet and treaties, convocation of the Diet, dissolution of the House of Representatives, announcement of the general election of the members of the National Diet, the attestation of the appointment and dismissal of the Minister of State and other officials in accordance with the law, the attestation of powers and credentials of Ambassadors and Ministers, of instruments of ratification and other diplomatic documents, and so on.

The Prime Minister and Chief Justice of the Supreme Court is also appointment by the Emperor after being designated by the Diet and the Cabinet respectively. Notably, the position of the Emperor in post-war Japan differs greatly from pre-war Japan; in pre-war Japan Emperor was the source of sovereign power.

Diet

The National Diet comprises two Houses, namely, the House of Representatives and the House of Councillors. The National Diet is the highest body of state power and the sole law-making body of Japan.

The House of Representatives comprises 480 members, 300 of which are elected from single-seat constituencies, while the remaining 180 members are elected by the proportional representational system. The proportional representational system primarily divides the nation into eleven electoral blocs and chooses members varying between 6 members to 30 members, depending upon the size of the bloc. The term of the office is four years, although it can be terminated before the member has served his term if the House is dissolved.

The total number of members of the House of Councillors is 242, 96 of which are elected by the proportional representation system from a single nationwide electoral district. The remaining 146 members are elected from 47 prefectural constituencies. The members of the House of Councillors serve for a period of six years, and half of the members are elected every three years.

Both the Houses of the National Diet exercise similar powers. In some exceptional cases, the decision of the House of Representatives precedes that of the members of the House of Councillors.

The 150 day ordinary session of the Diet begins from January every year and can be extended only once by the Diet. The Cabinet can determine whether extraordinary sessions need to be summoned.

Cabinet

The Cabinet is endowed with executive powers; it comprises the Prime Minister and the Ministers of State which should not be more than seventeen. The Cabinet is collectively responsible to the Diet. The Cabinet has to resign en masse when the Prime Minister's post becomes vacant or when the first session of the Diet is summoned after a general election of members of the House of Representatives. If the House of Representatives passes a no-confidence resolution or rejects a confidence resolution, the Cabinet will be compelled to resign en masse, unless the House of Representatives dissolves within ten days.

The Prime Minister is appointment from among the members of the Diet by a resolution of the Diet. The Emperor appoints the Prime Minister, who is supposed to be a civilian. The Prime Minister further appoints the Ministers of States; he also has the authority to dismiss them. The Prime Minister, who represents the Cabinet, submits the bills to the Diet. Apart from submitting bills, he also reports to the Diet on issues concerning general national affairs and foreign relations. He is also responsible for exercising control and supervising various administrative branches.

The Cabinet comprises the Cabinet Office and eleven Ministries that is established by the respective Establishment Laws and are mentioned in the National Government Organization Law. The Cabinet also consists of the Cabinet Secretariat, Cabinet Legislation Bureau, National Personnel Authority, Security Council of Japan, and other Cabinet organs. The Cabinet also consists of the Board of Audit which is a constitutionally independent organization. Its role is to audit the final accounts of the State and other public corporations and agencies.

Judiciary

The entire judicial power of the country is vested in the Supreme Court of Japan as well as the other inferior courts like the High Courts, District Courts, Family Courts and Summary Courts. Apart from the Chief Justice, who is appointed by the Emperor, the Justices of the Supreme Court are appointed by the Cabinet. The Judges of the inferior courts are appointed by the Cabinet as well, but the list of nominations is prepared by the Supreme Court.

8.3 CIVIL SERVICE

Bureaucrats and civil servants play a crucial role in the welfare of the State; the capacity of the government to solve the problems of the State is extremely dependent on the quality of the staff. Therefore, the ways of selecting and recruiting talents, training and motivating them are constantly being explored to enhance the quality

of the service provided. Herman Finer rightly pointed out almost seventy years ago, 'The question of personnel… that is the heart of the administration'.

About 3.61 million people work in the public sector in Japan. Of this, about 0.66 million work for the national government and 2.95 million work for local governments. Interestingly, this contributes to 5.5 per cent of Japan's working population. This percentage is extremely low as compared to other countries. The working population in the public sector in France, Sweden, Germany and the United States stands at 22 per cent, 28 per cent, 11 per cent, and 14 per cent respectively.

The civil servants who work for the national government are divided into 'special' and 'regular' categories. The appointment of special category civil servants is influenced by political and other factors and there are no competitive examinations. This category comprises cabinet ministers, heads of independent agencies, members of the Self-Defense Forces, Diet officials, and ambassadors. The regular category civil servants are recruited through competitive examinations. This group can further be divided into junior service and upper professional service.

8.3.1 Central Personnel Agency

The central personnel agency of the Japanese government is the National Personnel Agency (NPA). The NPA is headed by three commissioners, who are appointed by the Cabinet after the consent of the Diet. The commissioners serve for a period of four years. One of these Commissioners is appointed as the President; the role is equivalent to that of a Minister. The Secretary General heads the secretariat of the NPA, a role which is equivalent in rank to an Administrative Vice-Minister. The Secretariat comprises four bureaus, namely, National Public Service Ethics Board, the National Institute of Public Administration and regional offices, Local office (National Personnel Authority of Japan, 2011). National Public Employees are stipulated as 'servants of all the people' in the constitution and are absolutely required to perform their duties with neutrality and fairness.

For this reason, based on the 'The National Public Service Act,' the NPA was established as a neutral and specialized organization responsible for ensuring fairness in personnel administration and protecting the benefits of national public employees.

The main functions of the NPA are as follows:

- Implementing recruitment examinations and training programs, and establishing standards for appointment and dismissal which ensure fairness in personnel administration.
- Making recommendations to the Diet and the Cabinet regarding remuneration and other working conditions for national public employees as compensation for the restriction of fundamental labour rights.

- Researching domestic and international systems of personnel management and enforcing personnel management measures that can meet the needs of the times as a specialized agency for personnel administration.

NPA Organization

- The organizational structure of the NPA is headed by three commissioners, one of whom is given the role of president. Commissioners are appointed by the Cabinet with approval of the Diet. Appointment and dismissal of Commissioners are attested by the Emperor.
- The NPA Secretariat is placed under the NPA as an administrative department. The Secretariat is composed of four divisions and four offices under the Secretary-General, the National Institute of Public Administration, eight regional bureaus, and the Okinawa Local Office.
- In addition, the National Public Service Ethics Board is set up under the NPA, based on the National Public Service Act and the National Public Service Ethics Act.

Recruitment

Competitive examinations play an important part in the recruitment of public service personnel. Any Japanese whose fulfils the age requirements is eligible to take the examination. Examination consists of general knowledge tests, specialist knowledge tests and interviews (National Personal Authority of Japan, 2011). To gauge the specialist knowledge, examinations are divided into areas such as law, economics, physics, etc. and the candidates are required to choose their area of specialization. The names of the successful candidates are then declared on an eligibility list. The list is only valid for a fixed period of time. Each ministry and agency then chooses candidates from the list to interview and the final choice is made regarding the candidates.

The decisions regarding the promotion and rotation of the personnel are done unilaterally by the management. It is not obligatory for the management to make an announcement of a vacancy. The management is also not obligated to wait for employee applications. The personnel division of each ministry and agency draft a personnel movement plan. The plan should be ratified by a high-ranking official who has authority over appointment, usually a Minister or Administrative Vice-Minister. Usually, the employees are rotated to different position every few years. The position to which they are transferred might not be within their own organization. Sometimes the employees are rotated to other ministries and agencies, who return to their initial appointment ministry later.

Promotion of employees is based on merit. No examination is conducted for promotion of employees. Some of the important factors that play a role in the promotion of an employee are the initial level of recruitment examination, seniority and performance record. The highest position to which the employees can be promoted is the Administrative Vice-Minister.

Ethics and Civil Service

Japan's public service is considered to be one of the most transparent authorities in the world (Transparency International, 2003). One reason behind is that several investigative bodies in Japan such as the judicial police, public prosecutors and special investigative sections or departments join in administrative organizations. Importantly, there are three major cities in Japan where the public prosecutors offices have special investigation departments to probe cases relating to bribery, breach of trust, etc. These three cities are Tokyo, Osaka and Nagoya. These special investigative departments are staffed with highly competent investigative office. When a case is investigated in the investigation department, they probe other related crimes as well. When a case regarding corruption is being probed, they also probe other crimes such as a violation against the law for oath, testimony, violation against the Political Funds Control Law, etc.

The National Public Service Ethics Law, which was effectuated from April 2020, was aimed at preventing civil servants from abusing their power. The aim was to ensure that the public trusted public administration so that any suspicion regarding the performance of duties of the civil service was removed. The law provides for the establishment of a National Public Service Ethics Board with the National Personnel Authority. The role of the National Public Service Ethics Board is to conduct research regarding the retention of ethics in national public services. Ethics can bolster discipline within the national public services; the ethics board had the power to take disciplinary action against employees who violate this law.

The National Public Service Ethics Board can also submit a proposal regarding the establishment or revision of the National Public Ethics Code to the Cabinet. The Code mandates:

i. Assistant Director or other higher officials to report gifts and favours received from organizations of value above 5000 yen

ii. Deputy Director-General to divulge details of their income and stock exchange

iii. Appointment of Ethic supervisory officers in each Office and Ministry to ensure national public service officials are adhering to ethical practices.

Check Your Progress

1. List the duties of the Emperor of Japan.
2. Which is the highest body of state power in Japan?
3. How many members are there in the House of Representatives?
4. Who heads the National Personnel Agency?
5. Who appoints the Commissioners of the NPA?
6. When was the National Public Service Ethics Law effectuated?
7. Why was the National Public Service Ethics Law introduced?

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8.4 ANSWERS TO CHECK YOUR PROGRESS QUESTIONS

1. The Emperor performs certain activities in accordance with the advice of the Cabinet. These activities are the announcement of the amendments of the Constitution, laws, orders of the Cabinet and treaties, convocation of the Diet, dissolution of the House of Representatives, announcement of the general election of the members of the National Diet, the attestation of the appointment and dismissal of the Minister of State and other officials in accordance with the law, the attestation of powers and credentials of Ambassadors and Ministers, of instruments of ratification and other diplomatic documents, and so on.
2. The National Diet is the highest body of state power and the sole law-making body of Japan.
3. The House of Representatives comprises 480 members, 300 of which are elected from single-seat constituencies, while the remaining 180 members are elected by the proportional representational system.
4. The central personnel agency of the Japanese government is the National Personnel Agency (NPA). The NPA is headed by three commissioners, who are appointed by the Cabinet after the consent of the Diet.
5. Commissioners of the NPA are appointed by the Cabinet with approval of the Diet.
6. The National Public Service Ethics Law was effectuated from April 2020.
7. The National Public Service Ethics Law was introduced to ensure that the public trusted public administration so that any suspicion regarding the performance of duties of the civil service was removed.

8.5 SUMMARY

- The Emperor of Japan acts as the symbol of the country and of the unity of its people. He performs certain activities in accordance with the advice of the Cabinet.
- The National Diet comprises two Houses, namely, the House of Representatives and the House of Councillors. The National Diet is the highest body of state power and the sole law-making body of Japan.
- The Cabinet is endowed with executive powers; it comprises the Prime Minister and the Ministers of State which should not be more than seventeen. The Cabinet is collectively responsible to the Diet.

- The entire judicial power of the country is vested in the Supreme Court of Japan as well as the other inferior courts like the High Courts, District Courts, Family Courts and Summary Courts.
- Bureaucrats and civil servants play a crucial role in the welfare of the State; the capacity of the government to solve the problems of the State is extremely dependent on the quality of the staff. Therefore, the ways of selecting and recruiting talents, training and motivating them are constantly being explored to enhance the quality of the service provided.
- The civil servants who work for the national government are divided into 'special' and 'regular' categories. The appointment of special category civil servants is influenced by political and other factors and there are no competitive examinations. The regular category civil servants are recruited through competitive examinations.
- The central personnel agency of the Japanese government is the National Personnel Agency (NPA). The NPA is headed by three commissioners, who are appointed by the Cabinet after the consent of the Diet. The commissioners serve for a period of four years.
- Competitive examinations play an important part in the recruitment of public service personnel. Any Japanese whose fulfils the age requirements is eligible to take the examination. Examinations consist of general knowledge tests, specialist knowledge tests and interviews. To gauge the specialist knowledge, examinations are divided into areas such as law, economics, physics, etc. and the candidates are required to choose their area of specialization.
- The decisions regarding the promotion and rotation of the personnel are done unilaterally by the management. Promotion of employees is based on merit. No examination is conducted for promotion of employees.
- The National Public Service Ethics Law, which was effectuated from April 2020, was aimed at preventing civil servants from abusing their power. The aim was to ensure that the public trusted public administration so that any suspicion regarding the performance of duties of the civil service was removed.

8.6 KEY WORDS

- **Attestation:** Attestation refers to the act of being a witness to the execution of a document and then formally certifying it.
- **Audit:** Audit is the financial inspection of an organization's account. The Cabinet of Japan consists of the Board of Audit which is a constitutionally independent organization. Its role is to audit the final accounts of the State and other public corporations and agencies.

- **Ethics:** Ethics refer to the moral principles that guide a person's behaviour and how he conducts his activities. Japan has a National Public Service Ethics Board to ensure that the officials display a proper code of conduct while performing their duties.

8.7 SELF ASSESSMENT QUESTIONS AND EXERCISES

Short-Answer Questions

1. How are the members of the two Houses of National Diet elected?
2. Under what conditions does the Cabinet in Japan resign en masse?
3. Write a short note on the appointment of national civil servants.
4. List the main functions of the National Public Service Ethics Board?

Long-Answer Questions

1. Analyse the fundamental components of the Central Government of Japan.
2. Discuss the organizational structure of the NPA.
3. Explain the functions of the National Personnel Agency.

8.8 FURTHER READINGS

Charlesworth, James Clyde. 1967. *Contemporary Political Analysis*. New Jersey: Free Press.

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BLOCK - IV
ADMINISTRATIVE SYSTEM OF SWITZERLAND AND CHINA

UNIT 9 ADMINISTRATIVE SYSTEM OF SWITZERLAND

Structure

9.0 Introduction
9.1 Objectives
9.2 Federal Legislature
9.3 Federal Council
9.4 Answers to Check Your Progress Questions
9.5 Summary
9.6 Key Words
9.7 Self Assessment Questions and Exercises
9.8 Further Readings

9.0 INTRODUCTION

In this unit, you will learn about the administrative system of Switzerland. It will begin with a discussion on the bicameral federal legislature of Switzerland, also known as the Federal Assembly, which comprises the National Council and the Council of States. The powers of the Federal Assembly will also be discussed in detail. The unit will also delve into the functions of the Federal Council, while also delineating the relationship between the Federal Assembly and the Federal Council.

9.1 OBJECTIVES

After going through this unit, you will be able to:

- Understand the powers and functions of the Federal Assembly
- Discuss the functions of the Federal Council
- Analyse the relationship between the Federal Council and the Federal Assembly

9.2 FEDERAL LEGISLATURE

The bicameral federal legislature of Switzerland, called the Federal Assembly, encompasses the National Council and Council of State. Article 71 of the

Constitution vests supreme power of the Constitution with the Federal Assembly, through subject to the rights of the people and the Cantons. Laws that are passed by the Assembly cannot be vetoed by the President; not can these laws can be rejected by the people or the Cantons at the polls. The supremacy of the Federal Assembly is further established by the fact that the other branches of the Swiss Government do not coordinate, and are subordinate to the Assembly, subject to the provisions of the Constitution.

National Council

The lower house of the legislature is called the National Council. Its total strength is not fixed but varies from time to time according to the population. However, every single Canton or half a Canton must be represented by at least one representative to ensure that the interests of the people living in every canton are safeguarded. Members of the National Council are elected by secret ballot; however, unlike India which follows a First-Past-The-Post-System, the membership to the National Council is on the basis of proportional representation. Clergies, executives and principal administrative servants of confederation, federal councillors and members of the Council of States are not eligible for election. Membership to the National Council is for four years. The House is not subject to dissolution save for a total revision of the Constitution when the Houses do not agree with each other. The House meets regularly four times a year in the months of March, June, September and December.

The National Council elects its own president and vice president. They have a one-year term and are not eligible to fight for the same office in the next consecutive president. Generally, the convention is that the vice-president succeeds the outgoing president. The President of the National Council possesses the casting vote in case of a tie and votes like any other member of the National Council when the House is trying to elect various committees and bureaus. The duty of the President is to regulate the business of the House. He is also responsible for maintaining the dignity of the members of the House.

Council of States

The upper house of the Swiss Legislature is called the Council of States. Every Canton sends two members while a half Canton sends one member to the Council of States. The total membership of the Council of States is 46 representing twenty-three Cantons, three divided into half Cantons. The method of being elected to the Council of States varies from Canton to Canton. In some of the Cantons, the deputies of the Council of States are elected by the Cantonal Legislatures, in majority of them; the people elect them. The tenure for members of the Council of states is from one year to four years; however, the most common tenure is three years. Members of the Council of States do not vote on issues keeping their Cantonal interests in mind; rather, they vote according to their consciences. The Council of States elects its own Chairman and Vice-Chairman for every session.

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Article 82 of the Swiss Constitution specifies that the Chairman and the Vice-Chairman may neither be chosen from the deputies of the same Canton, nor any of these officers be elected from among the representatives of the same Canton for two consecutive sessions. The House functions by an absolute majority of the total members of the House. As stated above, the members vote according to their conscience and are not directed to vote according to Cantonal interests. The Council of States is not subservient to the National Council.; their powers are similar. Both houses must pass legislative measures for a bill to become a law; incase there is any disagreement between the two Houses, the Bill is dropped. The Swiss Constitution also guarantees parity between the two houses in financial measures as well.

Powers of Federal Assembly

The Swiss Federal Assembly has been vested with all kinds of functions—legislative, executive, judicial as well as Constitution-amending. Let us study each of them in turn.

(I) Legislative

The following are the legislative and financial powers of the Federal Assembly:

- Has the power to pass federal laws and legislative ordinances
- Passes the annual budget, appropriates the state accounts and authorizes public loans floated by the federal government
- Has the power to determine and enact necessary measures to ensure the due observance of the Federal Constitution, the guarantee of the Cantonal Constitution and the fulfillment of federal obligation
- Has the power to enact measures ensuring the external safety of the country, her independence and neutrality
- It adopts measures ensuring the territorial integrity of the Cantons and their Constitutions, the internal safety of Switzerland and the maintenance of peace

It should be mentioned here that all laws passed by the Federal Assembly are subject to referendum if 30,000 Swiss Citizens or 8 Cantons demand it.

(II) Executive

The following are the executive powers of the Federal Assembly:

- Both Houses together elect the Federal Councillors, the judges of the Federal Tribunal, the Chancellor, the members of the Insurance Tribunal and the Commander-in-Chief
- The right of election or confirmation, as regards other officers, may be vested with the Assembly by the Federal Council
- Supervises the activities of the Civil Service

- Has the power to decide administrative disputes and conflicts of jurisdiction between federal officials
- The Assembly determines salaries and allowances of members of federal departments and of federal Chancellery and the establishment of permanent federal offices and their salaries
- The Federal Assembly controls the federal army
- Has the power to declare war and conclude peace
- It ratifies alliances and treaties. The treaties concluded by the Cantons between themselves or with the foreign states are to be ratified by the Federal Assembly provided that such Cantonal treaties are referred to the Federal Assembly either on the appeal by the Federal Council or another Canton
- Supervises the Federal Tribunal

(III) Judicial

The following are the judicial powers of the Federal Assembly:

- Has the power to elect the judges of the Federal Tribunal
- Hears appeals against the Federal Council's decisions on administrative disputes
- Deals with conflicts of jurisdiction between different federal authorities
- Has the power to exercise prerogative of pardon and amnesty
- Pardon is granted in joint session of the two Houses; whereas, amnesty is granted by two Chambers meeting separately

(IV) Powers of Constitution Amendment

The Swiss Constitution can be amended after the participation of both Chambers of the Federal Assembly as well as the people. The Constitution can be amended, either wholly or partially, if both houses agree and the people accept the changes proposed through a referendum. If both Chambers disagree on the amendments, the proposed changes are put before the people and if the changes are accepted in the referendum, new elections to the Federal Assembly take place. The newly constituted Houses passes the requisite amendment, which is placed before the people and the Cantons for their approval.

Supervision of Administration

The Federal Assembly exercises general supervision over the federal administration by issuing instructions to the Federal Council in the form of postulates. The members of the Assembly can elicit information from the Executive through 'Interpellations' as well as ask 'minor questions' from the Federal Councillors who are supposed to give written answers. With the powers discussed above, the Swiss Federal

Assembly may seem to be a powerful body, however, it is not. The powers are more nominal than real. It neither controls the legislature nor the finances. Moreover, the adoption of devices like Referendum and Initiative has enabled ordinary citizens to exercise final power of accepting or rejecting a Bill. Ordinary citizens can even ask the Assembly to pass a bill, which it has ignored.

9.3 FEDERAL COUNCIL

The Swiss Constitution vests superior executive authority of the Confederation in a plural body known as the Federal Council. The seven members who make up the Federal Council enjoy parity and possess co-equal authority. This is because the makers of the Swiss Constitution have always been wary of giving full executive powers to a single individual believing it to lead to the path of dictatorship. Moreover, this type of executive was in consonance with the traditions long established in the Cantons.

Chairman of the Council

The seven members of the Federal Assembly elect a chairman designated as the President of the Swiss Confederation for a period of one year. The Chairmanship rotates among the members of the Federal Council and is merely a position of courtesy; the chairman does not enjoy any special powers. The Chairman casts the deciding vote in case of a tie and represents the country at home and abroad. He also presides over ceremonial occasions, and receives rulers and ministers of the other States. Like other members of the Federal Assembly he heads a department.

Relationship between the Federal Council and Federal Assembly

The Federal Council is neither independent of the legislature like the United States, nor is it dependent on the legislature like in India. In Switzerland, the Federal Councillors are not members of the Assembly. They do not get to vote in the Assembly, however, they do participate in the proceedings of the Assembly. The Assembly cannot vote out the Council through a vote of no-confidence. Many have stated that the Council acts like a glorified drafting bureau of the Assembly as Swiss policies emanates originally and finally from the Assembly. However, in case of an Emergency, the Assembly may delegate full powers to the Council. It may also issue directions indicating the manner in which the Council's functions are to be discharged. The Council does not have the power of the Initiative. Previous sanction of Assembly or its subsequent ratification is essential when the Council exercises the prerogatives relating to foreign affairs, armed forces or ordinary conduct of public administration.

However, none of this implies that the Council is merely a rubber stamp of the Assembly. Every Councillor who is elected is an expert in a field and is also equipped to handle administrative matters; because of this, a lot of the Assembly's

work is delegated to the Council. It would be accurate to state then that the Federal Council is 'a guide as well as instrument and often suggests as well as drafts measure.' In recent times, the powers given to the Federal Council have increased. Many powers were given to the Council during the 1930s and 40s to overcome the challenge of the Great Depression as well as the Second World War. These powers have not been withdrawn.

Functions of the Federal Council

The members of the Federal Council are members of the Federal Assembly who resign from the membership of the Assembly immediately after being elected as Federal Councillors. According to Article 96 of the Swiss Constitution, each Canton cannot have more than one member in the Federal Council. Tradition dictates that the Council must have one member each from the Cantons of Zurich, Berne and Vaud. All the three nationalities German, French and Italian are accorded representation in the Council in the ratio of 4, 2 and 1.

The functions of the Federal Council have been discussed below under four heads: legislative, executive, financial and judicial.

(I) Legislative functions

The legislative functions of the Federal Council are as follows:

(i) The Federal Council prepares and initiates measures either on their own accord or at the request of the Federal Assembly and then pilots them through the Houses.

(ii) Although the members of the Federal Council do not have vote in the Houses, they participate in the proceedings of the Houses and reply to questions.

(iii) The Federal Council attends the meetings of the various Parliamentary Committees, which examine the Bills brought before the legislature and due to their common sense and mental grasp, exercise considerable influence on the bills and in many cases have decisive voice.

(iv) The Federal Council furnishes opinions on the Bills introduced by the private members, on a reference made to them. In fact, no Bill comes before the Swiss Legislature unless it is first considered by an appropriate Councillor.

(II) Financial functions

The Federal Council administers federal finance as well. As such:

(i) It prepares the annual budget and presents it to the Federal Assembly.

(ii) It collects the revenues and supervises the expenditure appropriated by the legislature.

(iii) It manages national undertakings such as Railways.

NOTES

(III) Executive functions

The executive functions of the Federal Council are as follows:

(i) The Federal Council is supposed to enforce laws and ordinances passed by the federal legislature.

(ii) The Federal Council is responsible for foreign affairs of the Swiss Confederation.

(iii) The Federal Council appoints all officers of the Confederation except those who are appointed by the Federal Assembly in a joint session.

(iv) The Federal Council enforces the decisions of the federal tribunal and arbitrates the awards on disputes between the Cantons.

(v) The Federal Council exercises supervisory control over the Cantonal governments, for securing the enforcement of federal law.

(vi) The Federal Council examines the treaties which the Cantons enter into with each other or with foreign countries and approves them if it deems fit.

(vii) The Federal Council controls federal army and all its branches of administration.

(viii) The Federal Council examines the laws and ordinances of the Cantons that have to be submitted to it for its approval and supervises the branches of Cantonal administration where such supervision is entrusted to it.

(ix) The Federal Council gives a regular report on domestic and foreign affairs to the Assembly at each session and makes special report on other occasions if required to do so.

(IV) Judicial powers

The Federal Council also has judicial powers. As there are no administrative courts in Switzerland, cases arising from the public actions of federal officials, are brought before the Federal Council. The Federal Council possesses appellate jurisdiction over decisions of the Cantonal Governments in cases relating to discrimination in elementary schools, differences arising out of treaties relating to trade, military taxation, customs, Cantonal elections, and so on.

Check Your Progress

1. How are the members of the National Council elected?
2. What is the tenure for the members of the Council of States?
3. What is the total membership of the Council of States
4. List any two legislative power of the Federal Assembly.
5. List any two judicial power of the Federal Assembly.
6. What are the financial functions of the Federal Council?

9.4 ANSWERS TO CHECK YOUR PROGRESS QUESTIONS

1. Members of the National Council are elected by secret ballot; however, unlike India which follows a First-Past-The-Post-System, the membership to the National Council is on the basis of proportional representation.
2. The tenure for members of the Council of States is from one year to four years; however, the most common tenure is three years.
3. The total membership of the Council of States is 46 representing twenty-three Cantons, three divided into half Cantons.
4. Two legislative powers of the Federal Assembly:
   - Has the power to pass federal laws and legislative ordinances
   - Has the power to enact measures ensuring the external safety of the country, her independence and neutrality
5. Two judicial powers of the Federal Assembly:
   - Has the power to elect the judges of the Federal Tribunal
   - Hears appeals against the Federal Council's decisions on administrative disputes
6. The Federal Council administers federal finance as well. As such: (a) It prepares the annual budget and presents it to the Federal Assembly. (b) It collects the revenues and supervises the expenditure appropriated by the legislature. (c) It manages national undertakings such as Railways.

9.5 SUMMARY

- The bicameral federal legislature of Switzerland, called the Federal Assembly, encompasses the National Council and Council of State. The supremacy of the Federal Assembly is further established by the fact that the other branches of the Swiss Government do not coordinate, and are subordinate to the Assembly, subject to the provisions of the Constitution.
- The lower house of the legislature is called the National Council. Its total strength is not fixed but varies from time to time according to the population. Members of the National Council are elected by secret ballot, however, unlike India which follows a First-Past-The-Post-System, the membership to the National Council is on the basis of proportional representation.
- The National Council elects its own president and vice president. They have a one-year term and are not eligible to fight for the same office in the next consecutive president. Generally, the convention is that the vice-president succeeds the outgoing president.

NOTES

- The upper house of the Swiss Legislature is called the Council of States. Every Canton sends two members while a half Canton sends one member to the Council of States. The total membership of the Council of States is 46 representing twenty-three Cantons, three divided into half Cantons. The tenure for members of the Council of states is from one year to four years; however, the most common tenure is three years.
- The Swiss Federal Assembly has been vested with all kinds of functions—legislative, executive, judicial as well as Constitution-amending.
- The Swiss Constitution can be amended after the participation of both Chambers of the Federal Assembly as well as the people. The Constitution can be amended, either wholly or partially, if both houses agree and the people accept the changes proposed through a referendum.
- The Swiss Constitution vests superior executive authority of the Confederation in a plural body known as the Federal Council. The seven members who make up the Federal Council enjoy parity and possess co-equal authority.
- The seven members of the Federal Assembly elect a chairman designated as the President of the Swiss Confederation for a period of one year. The Chairmanship rotates among the members of the Federal Council and is merely a position of courtesy; the chairman does not enjoy any special powers.
- The Federal Council is neither independent of the legislature like the United States, nor is it dependent on the legislature like in India. In Switzerland, the Federal Councillors are not members of the Assembly. They do not get to vote in the Assembly, however, they do participate in the proceedings of the Assembly. The Assembly cannot vote out the Council through a vote of no-confidence.

9.6 KEY WORDS

- **National Council:** The lower house of the legislature is called the National Council. Its total strength is not fixed but varies from time to time according to the population.
- **Council of States:** The upper house of the Swiss Legislature is called the Council of States. Every Canton sends two members while a half Canton sends one member to the Council of States. The total membership of the Council of States is 46 representing twenty-three Cantons, three divided into half Cantons.
- **Amendment:** Constitutional Amendment refers to changes made to an existing constitution.

- **Federal Council:** The Swiss Constitution vests superior executive authority of the Confederation in a plural body known as the Federal Council. The seven members who make up the Federal Council enjoy parity and possess co-equal authority.

9.7 SELF ASSESSMENT QUESTIONS AND EXERCISES

Short-Answer Questions

1. What are the legislative and financial powers of the Federal Assembly?
2. What are the executive powers of the Federal Assembly?
3. Write a short note on the Federal Council and the election of its chairman.
4. What are the legislative functions of the Federal Council?

Long-Answer Questions

1. Analyse the powers and functions of the Federal Assembly.
2. Describe the functions of the Federal Council.
3. Discuss the relationship between Federal Council and Federal Assembly.

9.8 FURTHER READINGS

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UNIT 10 DIRECT DEMOCRACY IN SWITZERLAND, POLITICAL PARTIES IN SWITZERLAND AND CANTONAL GOVERNMENT

Structure

10.0 Introduction
10.1 Objectives
10.2 Direct Democracy in Switzerland
10.3 Political Parties in Switzerland
10.4 Cantonal Government
10.5 Answers to Check Your Progress Questions
10.6 Summary
10.7 Key Words
10.8 Self Assessment Questions and Exercises
10.9 Further Readings

10.0 INTRODUCTION

In this unit, you will learn about the concept of direct democracy, which exists in Switzerland. Switzerland is one of the few countries where people have a direct say on the legislation. The devices of Referendum and Initiatives are used to allow citizens to take part in this process. This unit will delve into the advantages and disadvantages of both referendum system and initiative system. It will also discuss the role of political parties in Switzerland. The task of the cantonal government will also be highlighted.

10.1 OBJECTIVES

After going through this unit, you will be able to:

- Discuss the concept of direct democracy
- Explain the role of political parties in Switzerland
- Examine the role of the cantonal government.

10.2 DIRECT DEMOCRACY IN SWITZERLAND

The only nation in the world where direct democracy exists in some form is Switzerland; all other nations have representative forms of government, however, only in Switzerland do the people directly have the final say on legislation. Switzerland does have elected representatives but because of Referendum and Initiative, ordinary citizens have the final say on legislation. The devices of Referendum and Initiative have been adopted in some other countries also, but they serve as mere add ons to representative constitutionalism. They do not constitute the warp and woof of the political fabric, as is the case in Switzerland. A pertinent point that needs to be mentioned is that although Switzerland is only example of Direct Democracy in the world, yet, Swiss women were given the right to vote only in 1972.

Landsgemeinde

In some of the Cantons in the Swiss Federation, like Appenzell and Unterwalden, the concept of direct democracy works through the institution of Landsgemeinde. Landsgemeinde is a type of town meeting held by the citizens of an area. The political authority of the entire community is invested in the institution with annual meetings being held under the presidentship of an annually elected Landamman. Attendance to these town meetings is compulsory with fines being imposed on those who deliberately fail to attend. The assembly passes resolutions and laws and decides on issues related to finance, public works, taxes, and so on. Thus, the Landsgemeinde possesses the same power that is possessed by a legislature. In the words of Lloyd, 'The Landsgemeinde Cantons have the purest form of democracy in which the sovereign power of the people is directly exercised in all the critical acts of government by the full assembly of citizens forming the largest and most conspicuous example of what Rousseau and certain other political philosophers regard as the only democracy.'

Referendum

Another instrument of direct democracy in the Swiss Federation is referendum. Referendum means 'refer to the people' and can be stated to be the final word on all laws passed by the Swiss legislature. Referendum allows ordinary people to approve or reject a legislative measure proposed or already passed by the legislature. The Swiss Constitution allows two kinds of referendums—optional and obligatory (compulsory). Optional referendums are those in which bills are put up for referendum if there is a specific demand made for it by people based on the number of votes. In the case of compulsory referendums, the laws passed by the legislature do not become law until and unless the same has been approved by people.

All amendments made to the Federal and Cantonal Constitution is subject to a compulsory referendum. Article 114 of the Swiss Constitution makes it

specifically clear that a constitutional amendment shall be effected only when it is accepted by a majority of the cantons. Each full canton is entitled to one vote, and each half canton is entitled to only half a vote. The vote of a canton is determined by a majority of the electors' voting.

As stated above, compulsory referendums take place in the event of the Federal Assembly passing any bill that partially or wholly revises the Swiss Constitution. In such a situation, whether the bill becomes law depends on the vote of the people and the cantons. If a majority of the cantons approve of it, the said revision is affected. If the two Houses of the Federal Assembly disagree on whether a revision to the constitution is required, i.e., if a proposal is passed in one house and rejected in another, the proposal is put to referendum and if the people approve of the revision, the Federal Assembly is dissolved and new elections take place. The new Federal Assembly that takes office after the election proceeds to consider the proposed revision to the Constitution.

Optional referendums in the Swiss Confederation are used for the passage of federal laws and general binding federal decrees. Since 1921, they have also been used for the ratification of international treaties. A law that is not considered urgent is put to referendum if eight Cantons or 30,000 people demand it. It should be stated here that the Swiss Federal Assembly misused the urgency provision during war and economic crisis. Hence, a Constitutional amendment of 11 November 1949curtailed this power of Assembly by specifying that 50,000 voters or eight cantons can call for a Referendum even on a law is designated as urgent by the Federal Assembly. Such a law will cease to operate if within a year, it is not approved by the popular vote.

In the cantons constitutional referendum is compulsory in all cantons while legislative referendum is compulsory in ten full cantons and one half canton. In the rest of the cantons, referendum is not practised as laws are passed directly by the people in the Landsgemeinde.

How does Optional Referendum Work?

All laws that are passed by the Federal Assembly are sent to the cantons. Within 90 days of circulation if 50,000 Swiss citizens or eight cantons demand a referendum, the law is put to referendum throughout the confederation through the following process:

- The 50,000 signatures of Swiss citizens are procured through reply paid postcards sent to them by the Federal Council
- When the requisite number of signatures reaches the Federal Council, the law in question is published and circulated among the people
- Four weeks after the publication of the law, a Sunday is fixed for the voting

Initiative

Initiative is another unique feature of the Swiss Confederation. It basically gives Swiss citizens the right to rectify acts of omission made by the Swiss Federal Assembly. There are two kinds of initiative: formulative and unformulative. A formulative initiative is a proposal in the form of a draft bill; on the other hand, an unformulative initiative is a general proposal made to get a desired amendment. According to the Swiss Constitution, initiative can only be utilized for constitutional amendments. A complete revision of the Swiss Constitution or specific amendments in it can be made by popular Initiative on the demand of 50,000 Swiss citizens. The procedure for total revision differs from that of partial revision.

Before 1977, if there was a desire for a total revision of the Constitution by 50,000 people, the question of revision was put before the people. In 1977, the number was increased from 50,000 to 100,000. If the majority favour a total revision, the Federal Assembly is dissolved and new elections are held. The new Federal Assembly drafts a new constitution and puts it up for referendum by the people. If majority of the people and the cantons pass it, the Constitution is revised in toto.

On the other hand, the demand for partial revision of the Constitution can be made through unformulative initiative. The Federal Assembly may decide to approve or disapprove of the initiative. If it decides to approve, the partial revision is put before the people through referendum and if the majority of the people approve of the revision, the amendment is affected. On the other hand, if the Assembly rejects the initiative, the question of whether the revision should be made is again put before the people through referendum. If the people approve of the revision, the Federal Assembly that earlier rejected the revision now has to draft a bill and submit it for the people and cantons for their decision. In all the cantons, except Geneva and those in which the institution of Landsgemeinde is utilized, legislation for both legislative and constitutional initiative is provided for.

Advantages and Disadvantages of Referendum

Let us now discuss the advantages of referendum.

Advantages

The advantages of the referendum system as practiced in Switzerland are as follows:

(a) **Upholds the sovereignty of the people and deepens democracy:** Referendum makes ordinary citizens active stakeholders in the legislative and nation building process thereby deepening the meaning of democracy.

(b) **Checks power of political parties:** In representative democracies many a time it has been seen that public representatives as a result of pressure of lobby groups go back on legislative promises made to people or do not consider the interest of people before framing legislation. Referendum gives

ordinary people the chance to reject legislation that may be contrary to their interest thus giving them a veto over political parties. Many bills passed by the Swiss Federal Assembly have been rejected by the people. This clearly reflects that people do not always see eye to eye with their representatives.

(c) **Makes the masses politically aware:** As stated above, referendum makes people active stakeholders in the legislative process. This inculcates in them a sense of responsibility and serves as a valuable method for imparting political training to the Swiss citizens.

(d) **Greatest moral authority behind laws:** If a law is passed by the people themselves through referendum, more people would be willing to comply with it.

(e) **Resolves disputes between two Chambers of the Legislature:** Through a referendum deadlocks or impasses between the two houses of the legislature can be resolved since it acts as the final say over a law.

Disadvantages

The disadvantages of the referendum system as practiced in Switzerland are as follows:

(a) **Undermining of the Legislature:** If through a referendum the people choose to reject a bill passed by the Federal Assembly, the stature and authority of the legislature is undermined.

(b) **Masses do not have the ability to decide on complex legislation:** An elitist argument that is made against direct democracy is that legislation is a process that is too complex for the masses and thus must be left in the hands of public representatives. This argument seems absurd as the very people who are considered to be laymen without the ability to judge legislation apparently have the capability to decide who would be the best people to become public representatives.

(c) **Retards social, economic and political progress:** This argument against referendum was popularized by Sir Henry Maine in 1885. Maine asserted that referendum would impede social, economic and political progress of a country. For example, there is a strong possibility that untouchability would not have been outlawed in India in 1947 if India had the right of referendum as at that time a majority of the people in India practiced untouchability and were not in favour of outlawing it.

(d) **Small size of votes cast:** A major point against referendum is that due to electoral fatigue which the people are apt to develop when they are frequently called to the polls, the number of votes casts in a referendum is generally very small. Moreover, in most cases, the opponents of the bills that aim at defeating a particular bill go to the poll in larger number than their supporters.

(e) **Unnecessary delay:** Some criticize the referendum system as a system that causes unnecessary delay especially for bills that are urgently needed.

(f) **Moral efficacy questioned:** As stated above, in a referendum system, the opponents of the bills that aim at defeating a particular bill go to the poll in larger number than their supporters. Hence, a particular bill passed by the people may represent only minority opinion. In addition to this, a bill may be passed by a narrow margin. Here questions arise as to whether such bills command moral backing.

(g) **Costly:** Critics of the referendum system also criticize it on the grounds that it is too costly. A huge amounts of money is wasted on pamphleteering and other means adopted for procuring votes.

Advantages and Disadvantages of Initiative

The arguments that are made for and against Initiative and Referendum are pretty similar. Their theoretic basis is the same, though the conditions of their application differ from each other considerably.

Advantages

The advantages of the initiative system as practiced in Switzerland are as follows:

(a) **Popular sovereignty:** Initiative embodies the idea of popular sovereignty. In a representative democracy, the public representatives do not really represent the people in the real sense of the term. Popular sovereignty of individual citizens can only be expressed through their votes. Initiative gives citizens the right to initiate their own laws which represent their own express will.

(b) **Bridging the representative-people gap:** In a representative democracy, many a time the public representatives are apathetic towards the needs and demands of the people they represent. They lag behind in public opinion. Thus, an initiative reminds a legislature of his duties, makes him or her aware of the needs of the masses thus bridging the distance between representatives and people.

(c) **Greater authority behind laws that initiated by people:** A law that begins as an initiative by people and is later endorsed by the rest of the people in the country through referendum would be more willingly obeyed than the law that is passed by their chosen representatives.

(d) **Greater stability:** As people in the Swiss Confederation have the right of initiating laws themselves, the chances of citizens subverting the existing system is remote. Thus, it can be confidently stated that as a result of the initiative system, the chances of political upheavals are considerably minimized.

Disadvantages

The disadvantages of the initiative system as practiced in Switzerland are as follows:

(a) **Authority and responsibility of legislature undermined:** As was the case with the referendum system, initiative also undermines the authority of the legislature. Their authority is undermined further as initiative not only tries to rectify acts of commission but acts of omission as well. Thus, legislatures expect that people themselves will bring up issues of public interest themselves and they need not bother with it. This could possibly result in legislators shunning their responsibility.

(b) **Complex Drafting Process:** Drafting a bill is an extremely complex process that requires a degree of specialization which an ordinary citizen is not aware of. Thus, bills that are drafted under initiative are mostly 'crude in conception, unskilful in form, marred by obscurities and omissions.' The language of such bills is so defective that it can entail many interpretations. In the Swiss federation, referendum has been comparatively more popular and successful than initiative; however, a majority of Swiss statesmen and politicians applaud both the system of initiative and referendum. Many on the Left consider it to be an indispensable feature of Swiss democracy while on the Right, Catholics and conservatives consider it a check on hasty legislations. Thus, one can say that most people consider the Swiss system of referendum and initiative a complete success with both referendum and initiative being the pivots on which the Swiss political economy hinges. Here it would be pertinent to say that despite the successes of the Swiss system of direct democracy, such a system would not be appropriate for all nations. Such a system is bound to be misused in a country like India with its many diversities, ignorance and illiteracy. It can work in countries like Switzerland because it is the size of Punjab, just one of the 29 states in the country.

Check Your Progress

1. When were Swiss women given the right to vote?
2. What are the two kinds of referendums commonly used in the Swiss Federation?
3. What is the difference between optional referendums and compulsory referendum?
4. What are the two types of initiative?
5. What is the difference between formulative initiative and unformulative initiative?
6. List any two disadvantage of the referendum system.

10.3 POLITICAL PARTIES IN SWITZERLAND

Switzerland's political system is embedded in the multi-party federal parliamentary democratic republic framework. The Federal Council of Switzerland is the centre of the government, which also exercises the executive power along with the federal administration. Thus, no power is concentrated in the hands of one person or level of the government. The legislative power too is the prerogative of the government and two chambers of the Federal Assembly. Judiciary, however, is independent of the executive and the legislature. To modify the constitution, it is mandatory to introduce a referendum. On the other hand, if change is sought in a law, then referendum has to be requested. In these ways, citizens can participate in matters of governance. Citizens can challenge any change sought by the parliament and can also seek amendments in the constitution. This makes Switzerland the most leading and closet example of a direct democracy in the world.

The country has a system of governance rarely seen across the world—direct representation—also called half-direct democracy at time. This can be argued because in theory than in practice, the Sovereign of Switzerland is actually its entire electorate. Nonetheless, referendums on significant laws are regularly used since the adoption of the Constitution in 1848. All amendments to the constitution or joining of international organizations or any change to the federal laws that have otherwise no basis in the constitution have to be approved by the majority of both the people and the cantons.

Citizens have been empowered by the constitution to challenge any law that the parliament approves. If a citizen can get 50,000 signatures against a law within 100 days, then the constitution provides for scheduling of a national vote wherein voters have to decide through a simple majority whether the law will remain in force or be rejected. Citizen can also seek others' opinion on an amendment they want to propose to the constitution. For this purpose, they have to gather 100,000 within 18 months. Since this became a wholesome popular initiative, it is prepared as a next text whose wordings cannot be altered wither by the government or parliament. To counter this initiative, the federal council can make a counterproposal to the proposed amendment. It can be out up for vote on the same day as the original proposal. However, these initiatives on the part of the government are mainly a compromise between the status quo and some wordings of the initiative. Voters then decide through national polling whether the amendment will be accepted or no. In case both the original and the counter proposal are accepted, voters are required to hint at a preference. Those initiatives that are of the constitutional level need to be accepted by a double majority, i.e. of the voters as well of the cantons. Counterproposals, on the other hand, can be of two legislative levels and thus require only a simple majority.

The Federal Council of the Swiss government is comprised of seven-member executive council which leads the federal administration. It operates as a joint entity of the cabinet and collective presidency. As per law, any eligible citizen of the country can become a member of the National Council; candidates in fact do not have to register for the polls or to be members of the Council. The Federal Assembly is elected by the Federal Council for a term of four years. The president of the Confederation and the vice-president of Federal Council have largely a ceremonial role to play. They are elected by the Federal Assembly from among the members of the Federal Council. Their terms run concurrently for one year. Stability is the most important feature that defines and distinguishes the Swiss political landscape. It has never been renewed completely since 1848, thus giving a sense of long-term establishment. Between 1959 and 2003, the Council is comprised of a coalition of all parties in the fray and in the same ratio: two each from the Free Democratic Party (FDP), Social Democratic Party (SDP) and the Christian Democratic People's Party (CDPP) and one from the Swiss People's Party (SPP).The Council is rehauled only when one of the members puts in his/her papers. In the last over 150 years, only four incumbent members were voted out of the office. Even when shunted out, he/she is replaced by member from the same party and even the same linguistic group.

As mentioned, the government is a coalition of four major parties of the country. Each has the number of seats that reflects its share of voters and representation by members in Parliament. The classic distribution of 2 CVP/PDC, 2 SPS/PSS, 2FDP/PRD and 1 SVP/UDC as it stood from 1959 to 2003 was known as the 'magic formula'. The country has a multi-party system and its four largest parties have formed a coalition government since 1959. This has been possible due to the 'magic formula'. As per this arithmetic formula, seven cabinet seats are divided between these representatives of the four largest parties. This 'magic formula' has often come under severe criticism. In the 1960s, it was put under the banter for allegedly leaving out the Left-leaning opposition parties. In the 1980s, it was criticized for excluding the newly-surfacing Green Party. It was particularly criticized after the 1999 polls, which left the CDPP from being the fourth largest party on the National Council to being the largest. In the 2003 polls, the CDPP was voted a second seat in the Federal Council. This reduced its share to one seat.

Hearings in Swiss parliament are open to anyone, even foreigners. Switzerland has a bicameral parliament, also known as the Federal Assembly. It is made up of:

- Council of States (46 seats, Members serve a four-year term)
- National Council: Members are elected by popular vote on the basis of proportional representation to serve a four-year term

Politics and Party System

Swiss politics is dominated by four parties which have been usually represented in the government:

- **Radical party:** Traditionally, the Centre-Right Radical Party is thought of as being warmed to the interests of the business community. The founding fathers of modern Switzerland made the party in 1848. It recently merged with the Liberal party. It is the third largest group in the House of Representatives at present along with the Christian Democratic Party and is also the second largest group in the Senate.
- **Social democratic party:** This is also known as the Centre-Left party. Its influence seems to be waning in the recent years, yet it is the second largest group in parliament. Representatives of French-speaking Switzerland and trade unions make up its influential Left wing.
- **Christian democrat party:** It is traditionally a conservative Catholic party. For last few years, it has moved towards the Centre-Right of the political spectrum. The party has lost voters in recent times but still maintains its strength in parliament. The party members are also the biggest group in the Senate.
- **Swiss people's party:** This party has redefined the Swiss politics in many ways since the 1960s. This right-wing party has become the strongest political party in Switzerland.

The modern constitution of Switzerland can be traced to 1848 even though the country has a long republican tradition. The present constitution came into effect after the civil war of 1847. The constitution was revised in 1874 and amended as per the needs of the time regularly. It was revised completely in 1999 but it did not change the substance of the constitution, which is to give the constitution a modern and readable structure and language. There have also been other substantial changes made to the constitution in the form of small revisions but none changed the true meaning its holds for the Swiss community. The constitution defines the country as 'a federal state composed of 26 cantons with far reaching autonomy'. Of these, and emerging out of historical reasons, 6 of the 26 cantons are counted as half-cantons. Therefore, other sources that mention 23 cantons in Switzerland are also not wrong.

These half cantons only vote arithmetics in referendums and in the small chamber of parliament. However, their status is similar to those of full cantons. It is on these three levels that Switzerland's government, parliament and courts are organized:

(i) Federal

(ii) Cantonal (based on 26 cantonal constitutions)

(iii) Communal (in few small cantons and about 2,500 villages, citizens' meetings are held instead of cantonal and communal parliaments. Several communities have common local courts)

The confederation has been empowered by the Constitution to decide on matters related to foreign relations, the army, customs examinations and tariffs, value added taxes and the legislation on currency, measures and weights, railways and communications. Only some large cantons and some major cities have police forces of their own and hospitals and universities. Cantons decide on public schooling; this has resulted in 26 different kinds of education system within one country. However, it is the communes that actually run public schools, like many other public services, including water supply and garbage collection. To finance their activities, the confederation, cantons and communes collect their own income taxes.

The Swiss political system is definitely complex because of the details involved. In each state activity, the national legislature tried to establish an honoured balance between itself and the cantons and communes. This commitment is respected by the people too who regularly participate in accepting or rejecting proposal for central laws in the form of referendums.

The right to vote to women was given very late in the country, despite it being known as more participatory democracy than any other in the world as well as its people making the best use of their rights. It was only in 1959 that a canton introduced women's voting right within that canton. The proposal was rejected by67 per cent of the male population. Then, it was in 1971 that women finally got the right to vote on the national level. The last canton which refused to do so was forced to introduce it by the federal court as late as 1990. The court had referred to the1981 federal constitution amendment that granted equal voting rights to men and women.

Similar to that of the United States, even the Swiss Constitution does not define or mention political parties. It is said that in Switzerland political parties have extra constitutional growth. It was with the adoption of the Constitution in 1848 that political parties came to life in the country. Till that time, all national affairs were the prerogative of politicians of two groups who got their support from the Protestant German Cantons and Protestant French Cantons. Both were later rechristened as Liberals and the Radicals respectively.

Older, experienced politicians were part of the Liberal ranks and they advocated that the party's political philosophy should be based on laissez-faire principles. The Radicals, on the other hands, were relatively younger and, with their progressive outlooks, advocated an advanced form of liberalism. Despite differences, however, the Liberals and the Radicals came together to frame the Federal Constitution of1874, which had the opinions of both the groups. At the same time, the Catholic Conservative People's Party was not in favour of the either group as it comprised of members which had formed the Sonderbund,

which was a League of seven Catholic Cantons formed in 1845. This group also initiated the War of Secession in 1848. By1874, therefore, the country had three political parties but at present, besides these three, there are more parties that operate in the Swiss political system.

Check Your Progress

7. How many members does the Federal Council of the Swiss government comprise?
8. List the four prominent parties that dominate the Swiss politics.

10.4 CANTONAL GOVERNMENT

The Swiss Federation is divided into twenty-six cantons; notably, each canton has its own constitution and assembly. These cantons have broad authority, often exercising power that is not given to the federal government. Education and health policies fall within the purview of the cantonal government.

Overall there are 3,000 communes, which ensure that public utilities and roads are maintained. Like the cantons, the communes are largely autonomous. The size of the communes varies from Bagnes in Valais, which has an area of 109 square miles to Ponte Tresa in Ticino, which has an area of 0.1 square mile. The communes also vary in population. Some communes only have a hundred resident, while others like Zurich has a population of more than 3,50,000.

The cantons divide the power between the legislature, executive and the judiciary. The executive at the cantonal level is the cantonal government. Importantly, the members in each cantonal government range between five and seven members. Each council member is responsible for running a department such as the department of finance, department of health, department of education, and so on.

The official name given to the cantonal government differs from canton to canton. The main task of the cantonal government is to manage cantonal affairs. Not only does it plan and implement cantonal project and activities, but also coordinates the activities of the Confederation and the communes. The cantonal government is also responsible for implementation of cantonal and federal legislation. It runs the cantonal administration by exercising the powers that have been assigned by the Federal Constitution. Apart from this, the cantonal government is responsible for preparing and managing the budget of the canton.

The members of the cantonal government hold regular closed doors meeting to discuss issues. They attempt to reach unanimous decision as a collegial body on cantonal administration. All members of the cantonal government are expected to defend the position of the collegial body, regardless of their personal opinions.

The president of the cantonal government change every year; the position rotates according to the length of time the government members have been in office. The president does not enjoy any special privileges or status, apart from chairing cantonal government meetings.

Check Your Progress

9. How many cantons are there in Switzerland?
10. How many members can there be in a cantonal government?

10.5 ANSWERS TO CHECK YOUR PROGRESS QUESTIONS

1. Swiss women were given the right to vote only in 1972.
2. The Swiss Constitution allows two kinds of referendums—optional and obligatory (compulsory).
3. Optional referendums are those in which bills are put up for referendum if there is a specific demand made for it by people based on the number of votes. In the case of compulsory referendums, the laws passed by the legislature do not become law until and unless the same has been approved by people.
4. There are two kinds of initiative: formulative and unformulative.
5. A formulative initiative is a proposal in the form of a draft bill; on the other hand, an unformulative initiative is a general proposal made to get a desired amendment.
6. Some of the disadvantages of the referendum system are:
   - **(i) Undermining of the Legislature:** If through a referendum, the people choose to reject a bill passed by the Federal Assembly, the stature and authority of the legislature is undermined.
   - **(ii) Unnecessary delay:** Some criticize the referendum system as a system that causes unnecessary delay especially for bills that are urgently needed.
7. The Federal Council of the Swiss government is comprised of seven-member executive council which leads the federal administration.
8. Swiss politics is dominated by four prominent parties, namely, Radical party, Social democratic party, Christian democrat party, and the Swiss people's party.
9. There are twenty-six cantons in Switzerland.
10. The members in each cantonal government range between five and seven members.

10.6 SUMMARY

- The only nation in the world where direct democracy exists in some form is Switzerland; all other nations have representative forms of government, however, only in Switzerland do the people directly have the final say on legislation.
- Switzerland does have elected representatives but because of Referendum and Initiative, ordinary citizens have the final say on legislation.
- In some of the Cantons in the Swiss Federation, like Appenzell and Unterwalden, the concept of direct democracy works through the institution of Landsgemeinde. Landsgemeinde is a type of town meeting held by the citizens of an area. Attendance to these town meetings is compulsory with fines being imposed on those who deliberately fail to attend.
- Another instrument of direct democracy in the Swiss Federation is referendum. Referendum means 'refer to the people' and can be stated to be the final word on all laws passed by the Swiss legislature. Referendum allows ordinary people to approve or reject a legislative measure proposed or already passed by the legislature.
- Initiative is another unique feature of the Swiss Confederation. It basically gives Swiss citizens the right to rectify acts of omission made by the Swiss Federal Assembly.
- There are two kinds of initiative: formulative and unformulative. A formulative initiative is a proposal in the form of a draft bill; on the other hand, an unformulative initiative is a general proposal made to get a desired amendment.
- Switzerland's political system is embedded in the multi-party federal parliamentary democratic republic framework. The Federal Council of Switzerland is the centre of the government, which also exercises the executive power along with the federal administration. Thus, no power is concentrated in the hands of one person or level of the government.
- The government is a coalition of four major parties of the country. Each has the number of seats that reflects its share of voters and representation by members in Parliament.
- Swiss politics is dominated by four prominent parties, namely, Radical party, Social democratic party, Christian democrat party, and the Swiss people's party.
- The Swiss Federation is divided into twenty-six cantons; notably, each canton has its own constitution and assembly. These cantons have broad authority, often exercising power that is not given to the federal government. Education and health policies fall within the purview of the cantonal government.

- The main task of the cantonal government is to manage cantonal affairs. Not only does it plan and implement cantonal project and activities, but also coordinates the activities of the Confederation and the communes. The cantonal government is also responsible for implementation of cantonal and federal legislation.
- The members of the cantonal government hold regular closed doors meeting to discuss issues. They attempt to reach unanimous decision as a collegial body on cantonal administration.

10.7 KEY WORDS

- **Landsgemeinde:** In some of the Cantons in the Swiss Federation, the concept of direct democracy works through the institution of Landsgemeinde. Landsgemeinde is a type of town meeting held by the citizens of an area. Attendance to these town meetings is compulsory with fines being imposed on those who deliberately fail to attend.
- **Referendum:** An instrument of direct democracy in the Swiss Federation is referendum. Referendum means 'refer to the people' and can be stated to be the final word on all laws passed by the Swiss legislature. Referendum allows ordinary people to approve or reject a legislative measure proposed or already passed by the legislature.
- **Compulsory referendums:** In the case of compulsory referendums, the laws passed by the legislature do not become law until and unless the same has been approved by people.
- **Initiative:** Initiative is another unique feature of the Swiss Confederation. It basically gives Swiss citizens the right to rectify acts of omission made by the Swiss Federal Assembly.

10.8 SELF ASSESSMENT QUESTIONS AND EXERCISES

Short-Answer Questions

1. What do you mean by direct democracy?
2. What is an Optional Referendum?
3. Write a short note on Initiative.
4. What are the advantages of the referendum system?
5. What is the main task of the cantonal government?

Long-Answer Questions

1. Discuss the advantages and disadvantages of Initiatives.
2. Analyse the Swiss political system.
3. Discuss the functions of the cantonal government.

10.9 FURTHER READINGS

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UNIT 11 ADMINISTRATIVE SYSTEM OF PEOPLE'S REPUBLIC OF CHINA

Structure

11.0 Introduction
11.1 Objectives
11.2 Constitutional Structure of China
11.3 Important Features of the Present Constitution of China
11.4 Standing Committee of the National People's Congress
11.5 Answers to Check Your Progress Questions
11.6 Summary
11.7 Key Words
11.8 Self Assessment Questions and Exercises
11.9 Further Readings

11.0 INTRODUCTION

In this unit, you will learn about the impact of the 1911 revolution in China. The important features of the Chinese Constitution will also be discussed in detail. An understanding of the important political ideologies such as Confucianism, Marxism, Leninism, and Maoism will help us understand the political history of the country. Furthermore, the functions of the National People's Congress will also be discussed.

11.1 OBJECTIVES

After going through this unit, you will be able to:

- Understand the constitutional structure of China
- Discuss the important features of the Chinese constitution
- Analyse the functions of the National People's Congress

11.2 CONSTITUTIONAL STRUCTURE OF CHINA

The Chinese Revolution had a great impact on the history of China. Beginning with the White Lotus Rebellion (1796–1804), the entire nineteenth century was filled with revolutions for China. As the revolutions picked up their pace, power and influence of the imperial government waned. By the latter half of nineteenth century, military matters kept civilian officials most busy. The Ch'ing dynasty started ambling towards its end by the 1890s and revolutionary spirit was stretching its

wings throughout China. This revolutionary spirit was an assorted mix of a nationalist fervour, determination to eradicate the foreign Ch'ing dynasty and other foreign powers who were trying to lull China under their 'spheres of influence'. One such revolution was a rural-peasant revolution whose objective was to renew traditional Chinese values by ushering in a new dynasty that was evolved out of peasantry. Han and Ming dynasties were established in a similar way. Revolution was also marked by a commercial-industrial spirit. In this, the wealthy people of China stood in favour of loose investments based on the actions of the government. Last and the most crucial components of the revolutionary forces in China pertained to the urban thinkers and scholars who felt the need for internalizing modernity and other values of the West. These forces believed that China needed to disregard the traditionally held approaches to society and administration; they espoused the Western style of thinking. The flag bearers of this revolution inspired reform in the latter part of the Ch'ing period. They ruled out the government. Followed by many years of disunity, this brought China together under the nationalist government.

Early Reforms of the 1900s

China was humiliated because of the imposition of the boxer protocols on it by the European powers. The Boxer Rebellion in 1900 proved a failure, but it urged the imperial government to implement reformatory measures and westernize China. The education system was reformed around the same time. Under this, girls were allowed to get admission in schools; curriculum adopted modern subjects like science, mathematics, engineering and geography, leaving behind classics and Confucian studies. Civil services exams also adopted the same curriculum and by1905, old course structure was abandoned altogether. The Chinese people started sending their youth to Japan and Europe to study new and scientific subjects like economics, and a new era begun with new western modes of thinking like Marxism. Under Yüan Shih-k'ai (1859–1916), military was reorganized. He adopted the western and Japanese organizational models. Establishing military as a career was the key to this new set up. Now, the officer corps was established not on the basis of loyalty to the emperor, but on the basis of loyalty to one's commander. The last Hsüan-tung emperor, Pu Yi ascended the throne in 1909. In the same year, provincial assemblies which were originally suggested by K'ang Yu-wei were organized.

The consultative assembly was constituted in the year 1910. It was democratically elected and bound the whole nation. Though it meant to further the objectives of the imperial court, it ended up being an adversary for the imperial government. This led to an uprising in 1911 in Szechwan Province in the west. This took place because the government was planning on nationalizing the railways. What began as a small agitation soon took the form of a national revolution, which ended the imperial rule in China once and for all.

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Sun Yat-Sen

The 1911 revolution took shape from an uprising that occurred in the south-western province of Szechwan. The revolution was motivated by the court's proposal to nationalize the railway. Before this uprising, the revolutionaries were divided into various groups: affluent businessmen, who feared losing money due to the revolution; military commanders desirous of achieving independence; and lastly, Sun Yat-Sen. He was a western revolutionary who made an attempt to disintegrate the Ch'ing Dynasty in 1895, but failed. He was the chief stakeholder in the Chinese Revolution. He is often referred to as the father of revolution. He received Western education, and envisioned the revolution to be three-pronged in its objectives: to expel the foreign Machu Dynasty from China, to establish a democratic set up of republic China and to equalize land rights and wealth. Sun was responsible for unifying various movements of the Chinese Revolution in the form of the Chinese United League (Chung-kuo T'ung-meng hui, known as the T'ung-meng hui).

After this, Sun began planning the revolution. This was divided in three stages by him: a military government for three years, six-year duration during which democratic government was to be established in China, and ultimately, the time period taken to convert China into a constitutional democracy.

Yüan Shih-Kai

Yüan Shih-Kai was another very important player in the revolution of 1911. He was a conservative bureaucrat and monarchist. He was appointed by imperial government in 1911 to suppress the rebellion. Due to certain important steps taken by him, many deaths were caused, leading to the rise of other revolutions. When these revolutionaries continued, Yüan could clearly see that the overthrow of monarchy was inevitable. He chose to avoid getting in a real conflict with the revolutionaries. Later, the revolution turned him into a virtual dictator of China until his death in 1916.

Beginning of the Revolution of 1911

A revolution had been attempted at least ten times in the Chinese provinces. Most of them occurred in south west. An uprising in Szechwan was the actual beginning of the revolution. Agitated by the policy to nationalize the railways, students came on the streets on 24 August 1911, appealing for a delay in the proposed policy. With the arrest of leaders of the movement, thirty-two people were killed during the tug-of-war between troupes of government and protestors. After this, the people and government troupes began to fight among themselves. It should be related here that the original movement was started by wealthy and conservative people. They had no intention to affect the collapse of the imperial government; they just wanted to avoid any kind of financial loss due to the proposal of nationalization of railways. When this same government refused to negotiate, they started supporting the revolutionaries. Wangchuk was seized by the revolutionaries,

after which many provinces, namely, Changsha, Yunnan, Kwangtung and Szechwan declared themselves as independent from the emperor in late October and November. Two thirds of China was out of the rule of the Ch'ing Empire by the end of November. In December, provincial delegates came together from Central and North China and announced that the nation was now a republic. Sun Yat-Sen was chosen to be the provincial president of the Republic of China. They also set the date of 1 January1912 to be the first day of the Republic. However, one final task of eliminating the Ch'ing was still left.

Ch'ing Abdication

The imperial court was running out of its last breaths. As a desperate measure towards their survival, Yüan Shih-Kai was chosen to serve as the governor-general of Hunan and Hupeh by the appointed Manchus. These two provinces had not given way to secession. Yüan Shih-Kai was also elected as the prime minister by the national assembly in Beijing. Yüan put forth the conditions to the Manchus that they would have to make a national assembly, forgive the insurrectionists, provide him with the complete control over the military and free political parties from the ban. The emperor, the regent Prince Chün, was only a boy at that time and he granted all these demands to Yüan. However, Yüan's most crucial demand was the command over military. He knew that the Manchu Dynasty will not survive for long, so he aimed at avoiding civil war and becoming the first president of the Republic of China. The protestors and rebels considered Yüan to be an important leader, who contributed to their cause, for they knew that Yüan could cause the revolution to succeed and avoid civil war at the same time. Yüan announced on 3 January 1912 that he would put pressure on the Ch'ing to come down only if he would be made the president of the Chinese republic.

The first voted President, Sun agreed to his conditions. The Mongol or Manchu nobility did not want to come down, so Yüan 'persuaded' them by stirring more than fifty generals to proclaim their allegiance for the republic. Yüan was summoned by the Empress Dowager on 1 February 1912 to an audience and the government was officially handed over to him. The new government treated the former royals fairly well. It treated the emperor and his family as a foreign royalty and provided them with huge allowances. The emperor was officially abducted on February 12, followed by the official resignation of Sun as the president of the Republic on February 13. The United States was the first foreign country that acknowledged the nation as a republic on 5 April. Even though Yüan had announced himself to be an adherent of republicanism, his intentions against the fact was very clear when he assumed the presidency. All his cronies were given significant positions (War, Interior, Navy and Foreign Affairs) in his first cabinet and the least important positions were given to the revolutionaries. Despite his respect for the Tung meng-hui leaders, their precarious positions were evidently clear.

Kuomintang

Four new parties were absorbed by Sun Yat-Sen's Tung-Meng Hui party in the summer of 1912 to create a new party called the Kuomintang, or nationalist party. Another important insurrectionist, Sung Chaio-Jen controlled the party. He studied in Japan, where he demonstrated considerable interest in the parliamentary form of government. It was in the lines of provisional constitution that parliamentary elections were to be held within six months of the government's formation. The Kuomintang won the majority of seats in Parliament in December. In due process, Sung promised to check on the increasing power of Yüan with the help of responsible cabinet and parties. When Yüan was unable to win Sung with bribes, Yüan got him assassinated on 20 March 1913, when he was going to visit Peking to take charge of the new Parliament. This action resulted in the impeachment of Yüan. Provinces begun to start new revolution to make another republic, but Yüan brought them under control easily.

Yüan's dictatorship

By using threats, Yüan compelled the Parliament to choose him as the president in October, 1913. Later, the Parliament adopted the Tien-t'an Constitution, which favoured the cabinet system of parliament over the presidential system. Due to this, Yüan caused the permanent dissolution of the Parliament. So, Yüan Shih-Kai became the dictator of China by the beginning of 1914. Sun Yat-Sen ran away to Japan and the Kuomintang was eliminated as a political party. Yüan's desire was to become the emperor of China.

It was his ambition that drove him to bring first and second revolution to a halt. Prime Minister of Japan, Okuma, expressed his concern that it would be better for the Japanese and Chinese relations if China followed constitutional monarchy. Frank Good, who was Yüan's American advisor, wrote and published a series of articles explaining that the republican system was not suitable for a country like China. The National People's Representative Assembly voted for monarchy with overwhelming favours on 20 November 1915 and provincial delegates called on Yüan to become the official emperor of China. However in reality, Yüan had no idea of the intensity of anti-monarchical sentiments in China. Most passionate of these were provincial governors and military leaders. Military general Ts'ai Ao was the first one to direct the first revolution in Yunnan province. Slowly, more and more provinces started participating in the revolution and Yüan had to leave his dream of becoming the emperor in late March, 1916. However, provinces continue to advance and Yüan—alone and humiliated—died of uraemia in June. With his death ended the last dream of imperial China.

Period of Warlordism (1916–1927)

The end of Kuomintang brought an end to the Chinese dream of republic. Due to the secession of provinces in the last year of Yüan's career as president, China

was broken into a number of provinces or states. Most of them were under the control of military leaders. One big question was that who would succeed to the post of presidency. The political situation in China fell into a disarray. In the meantime, warlords started imposing aggressive policies against the neighbouring provinces. The reasons were generally trivial and illogical. With this, China suffered from a period of political chaos. At this time, Sun Yat-Sen started consolidating his forces in the south.

But his attempts were far from successful. Therefore, he retired for a certain period and started forming theories, which could result in the unification of China. He converted his party into the Chinese Nationalist Party (Chung-kuo Kuo-mintang).He succeeded in taking the province of Canton under his seizure and there, he established a republican government. He then declared his government as the national government of China, standing in opposition with the warlord's government who were in power in Beijing at that time. In 1924, Sun Yat-Sen died thinking that his dream had failed since China was torn apart by anarchy and chaos. The republican revolution, to which he gave his life, pulled China into disunity and violence. However, his dream was not over yet. In 1926, Chiang Kai-Shek, a young general who was deeply devoted to Sun's vision continued with his attempts to bring the warlord' s government down. In 1928, he succeeded in establishing a nationalist government in Nanking and finally, Sun's dream of unification was brought to reality.

People' Republic of China

In 1949, after a period of civil war, the Communist Party overthrew the Nationalist Government and established the People's Republic of China.

Check Your Progress

1. Who is known as the father of 1911 revolution in China?
2. Who was Yuan Shih-Kai?

11.3 IMPORTANT FEATURES OF THE PRESENT CONSTITUTION OF CHINA

The following are the important features of the Chinese Constitution:

- A brief document
- A socialist nature
- Supremacy of the Communist Party
- Sovereignty of people
- Unitary multinational state
- Personal property allowed

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- Special role of the Liberation Army
- A Chapter on rights and duties
- Democratic centralism
- Unicameral legislature
- Preamble of the Constitution

Political Traditions in China

As one of the world's oldest continuous political systems, China has evolved as an exceptionally advanced political culture, one that has guaranteed political change throughout the world. Although, initially under foreign rule, dramatic changes in Chinese life were predictable; it was a sign of the powerful inertial force of the Chinese civilization—the magnitude of the society and the survival power of both, its people and its culture. The following sections take a look at the history and political traditions in China.

Confucianism

Confucius (551–479 BC) was one of the most prominent philosophers in the Chinese political tradition. Although a few Chinese today would claim to be Confucian, his thinking, recorded in the 'Analects', serves as a guide to the Chinese political culture.

Confucius believed in the significance of a well thought-out society and in standardizing relationships within that society. There are five types of relationships that shape the social structure: relationships that exist between rulers and subjects, between parents and children, between husband and wife, between elder and younger brothers and between friends. Each individual, regardless of rank, must fulfil his or her responsibilities within these relationships. The Confucian code of conduct includes loyalty, filial piety, benevolence, righteousness and sacrifice, along with ritual and virtue.

Loyalty guarantees that the people will support the ruler even during hard times and will provide the ruler with political stability and authority. Filial piety means that taking care of elderly parents is everyone's indisputable social responsibility. The Communist Party promoted different versions of this concept in order to assure social welfare for the elderly. Benevolence encourages sympathy for each other and more importantly, the ruler's awareness of the needs of the people. Righteous sacrifice entails a sense of justice and self-sacrifice, protecting the interest of the larger group by sacrificing one's family interest and risking one's life in order to bring down unjust rulers. Ritual is to be used as a means to safeguard and spread established values and moral principles. The ruler is responsible for restoring the moral order and hence should be the most righteous person of all.

Centuries later, Mao Zedong's communist revolution proposed to destroy the Confucian social hierarchy. Although today, few Chinese would claim to believe

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in Confucianism, political relations between rulers under the Communist Party paradoxically reflect Confucian values. Confucian values can play a two-fold role in political change. On the one hand, Confucianism can create numerous latent barriers to the development of civil society and democratic politics. The first likely barrier is group orientation. By emphasizing one's social responsibilities, individual interests become less important. Thus, the Confucian ideal of group interest can be used to justify superseding individual interest, an ideal that differs from the western concept of the preservation of the individual interests.

The second possible barrier to civil society is the hierarchy politics. The state, under the righteous ruler, acts on behalf of the people; individual rights are neither guaranteed nor protected. In addition, government decision-making is not generally administered until a problem becomes a crisis. This authoritarian tradition is a barrier to the democratic administration of government. The third barrier is the propensity to look for righteous leaders while neglecting to build political institutions. The Maoist cult of personality in the 1960s and 1970s and Mao Zedong's efforts to destroy the party and government institutions are good examples of this tendency.

Other Political Ideologies

Confucianism explains only one part of the Chinese political culture. Without doubt, the Chinese Communist Party has never openly claimed to be a Confucian party. Rather, the party constitution states that Marxism, Leninism and Mao Zedong thoughts are the official party ideologies.

Karl Marx and Friedrich Engels are certainly the most familiar western writers in China. They argued that human history is driven by a combined tussle between the working class and the ruling class (historic materialism). The former stands for advanced knowledge and the desire to share political power, while the latter opposes any change that may threaten the status quo. Under capitalism, the working class is exploited by property owners through unfair distribution of wealth. Marx and Engels called for a working class revolution to overthrow the capitalist system and create a communist society where the means of production are publicly owned and where equality replaces social division.

The theories of communism and socialist revolution inspired the Chinese communist leader, Mao Zedong, who was along the lines of Russian Revolution, trying to search for a visible path to China's modernization. Although Mao accepted the basic Marxist and Leninist ideas about capitalism, imperialism and social revolution, the Chinese Revolution differed from Marxism and Leninism in several ways. First, because of China's weak industrial base, the Chinese Revolution was mostly a rural revolution, which was fought by peasants, rather than being a working-class revolution. Secondly, the Chinese Revolution was a populist movement in which Mao and his comrades directly appealed to the vast majority of the poor.

These features of the Chinese Revolution were later reproduced in Mao's antiestablishment tendencies in the movement against rightists during the year 1957

and in the Great Leap Forward of 1958. Populism discourages the role played by civil servants, technology and intermediate institutions, such as elections, rule of law and necessary elements for a civil society.

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The other difference between Maoism and Marxism-Leninism was the concept of 'continuing revolution under the proletarian dictatorship.' Mao reminded China to continue its revolution even after the communist victory. Without continuing the revolution, he warned that socialism would be worn by capitalist and feudal ideas. The Cultural Revolution (1966–76) was, therefore, Mao's last attempt to keep China on the socialist track by fighting against bureaucratic control.

Today, at least 70 per cent of Mao's theories are officially portrayed as those of a great leader and 30 per cent are regarded as wrong in approach. These are measured by the social, economic and political costs of his radical campaigns. Post-Mao leaders have, by contrast, adapted a realistic approach to ideology. While still claiming Marxism, Leninism and Maoism as its official ideologies, the Communist Party has quietly shifted its focal point from ideological campaigns to encouraging economic development and implementing market mechanisms.

Cultural Revolution

The Great Proletariat Cultural Revolution took place in China between 1966 and1976. People all over the country, in response to the call by Mao and other radical leaders, participated in overthrowing party and state bureaucratic organizations at all levels. Workers, peasants, soldiers and radical college students (Red Guards) with working-class family backgrounds took control over political power. Intellectuals, managers, administrators and professionals were condemned and sent to reeducation camps. Radical egalitarian reforms were executed in industrial management, agriculture production, wage distribution, education, medical care, family relations and marriage.

The Cultural Revolution ended in 1976, when Mao died and the radical leaders were arrested. Few other events in human history involved so many people and affected so many aspects of their lives. For Mao and his radical followers, the purpose of the Cultural Revolution was to refuse to go along with interference and keep China on the right track of socialist revolution. Mao saw that his socialist regime was threatened by at least three sources. These were as follows:

- **(i) Feudalism:** This included beliefs in social hierarchy.
- **(ii) Capitalism:** A threat from the West, which included individualism, a money culture, exploitation and so on.
- **(iii) Revisionism:** A Soviet threat, which included Soviet-trained technocrats and their pro-Soviet and elitist attitude.

Some argue that the purpose of the Cultural Revolution was not to achieve ideological purity, but it was to fulfil Mao's ambition of gaining personal power. Ideological concerns and individual power, however, cannot be easily separated.

Many have portrayed the Cultural Revolution as the 'dark age' in the modern Chinese history. The period was an economic disaster. Mao focused on political struggle and overlooked economic growth. The re-education of professionals and administrators was also seen as a waste of talent. The Cultural Revolution was also a political disaster. It supported the worship of Mao and the development of a cult of personality. It also bestowed on China a mob mentality and a deep distrust of political order and political institutions. This not only threatened China's future political stability, but also the changeover from an authoritarian system, that was based on personal rule, to a democratic system in which institutions were more important than individual leaders.

The Cultural Revolution left an ideological void. It not only barred traditional Chinese values, western liberal democratic ideas and Soviet-style socialism, but also engendered cynicism with socialism itself. The future Chinese generations were left with little to believe in. The Cultural Revolution was a cultural disaster as well. The Red Guards destroyed many historical landmarks, while many works of traditional art and literature were banned.

The official Chinese government's view of the Cultural Revolution focuses on negative results. Yet others are reminiscent of some positive changes. One result of the Cultural Revolution, as expected, was that it did succeed in curbing the gap between the elites and the masses. The current leaders who have also worked in fields have a better understanding of what China is for the majority of people. Those workers, peasants and soldiers who participated in management during the Cultural Revolution did gain political skills and developed a sense of political efficiency. One has to realize that most of those, who express disapproval of the Cultural Revolution, come from a small group of intellectual and political elites. In fact, many ordinary people benefited from the Cultural Revolution.

Check Your Progress

3. Who was Confucius?
4. What are the official party ideologies of the Chinese Communist Party?
5. What were the threats of socialist regime, according to Mao?

11.4 STANDING COMMITTEE OF NATIONAL PEOPLE'S CONGRESS

The National People's Congress holds a significant position in the Chinese Government. Let us discuss it in detail.

Organization of the National People's Congress

The National People's Congress (NCP) is an essential part of the central government's system of the People's Republic of China. Due to its exclusive nature

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and importance, it is treated among the organs of the Central People's Government. The Constitution of 1954 has rendered the National People's Congress with immense power, and it is the top most form of state authority and the only legislative authority of China. According to Article 59, the National People's Congress is composed of deputies elected by the provinces, autonomous regions and municipalities directly under the Central Government, and by the armed forces. The tenure of the deputies is four years, which may be extended in case the election of deputies to a new Congress is not completed. When a deputy is incapable of performing his duties, his electoral unit will hold a by-election to fill the vacancy. The new deputy so elected is to serve the remainder of the unexpired term. The deputies cannot be taken into police custody or put on trial without the approval of the Congress or else its standing committee, in case the Congress is in recess. Moreover, they are supervised by the units, which they represent and may be replaced in harmony with the law. The deputies may be present at the meetings of the people's Congresses or of their local units.

The National People's Congress has a standing committee as well as other committees. The annual session of the Congress is to be convened by the standing committee, which may also call for special sessions of deputies. The meetings of the Congress are controlled by an executive chairman of the presidium, who is elected by the deputies at the beginning of the session. For each session, the Congress sets up a secretariat, under the direction of a secretary general. He conducts the routine business of the Congress.

Functions of the National People's Congress

The National People's Congress has the following authorities and responsibilities:

To administer the enforcement of the Constitution and amend it

- To enact laws
- To elect the chairman and vice-chairman of the People's Republic of China, the president of the Supreme People's Court and the procurator general
- To choose the premier of the state council, vice-chairman and members of the council of national defence, on recommendation of the chairman of the People's Republic of China
- To decide upon the constituent members of the state council upon the premier's reference
- To remove the officials who are elected or appointed by the Congress from the office
- To study and give approval for the state budget and the financial report
- To suspend the responsible officials of the state council or of its ministries and commissions

- To decide on national economic plans, general amnesties and questions of war and peace
- To ratify the status and boundaries of provinces, autonomous regions and municipalities which are directly under the central authority
- To perform duties and responsibilities that are considered to be unnecessary by the Congress.

As the highest state authority, the power of the National People's Congress would be almost unlimited; yet, in fact, it is dominated by the Communist Party, which actually exerts the ultimate authority of the state.

Standing Committee of the National People's Congress

The standing committee is a permanent body of the National People's Congress to which it is responsible and answerable. It comprises a chairman and a number of vice-chairmen and members, as well as a secretary general. They are elected by the Congress to perform its functions until election of a new committee by the succeeding Congress or their recall by the existing Congress. The Chairman supervises over the meetings of the standing committee. Resolutions may be adopted by a vote of simple majority.

The standing committee, elected by the First National People's Congress on 27 September 1954, comprised a chairman, thirteen vice-chairmen and sixty-five members. Liu Shao-chi was elected chairman. Political leaders of different parties and groups were represented at the Committee. The standing committee exercises the following authority and responsibilities:

- To elect deputies to the National People's Congress
- To assemble the next National People's Congress
- To construe laws and issue decrees
- To administer the tasks of the state council, the Supreme People's Court and the Supreme People's Procuratorate
- To repeal those decisions and orders given by the state council that are in conflict with the Constitution, laws or decrees
- To amend incongruous annual adjudications of the government authorities of provinces, autonomous regions and municipalities which fall directly under the central authority
- To ordain or eliminate vice-premiers, ministers, heads of commissions or secretary general of the state council, in case the Congress is not in session
- To ordain or dismiss vice-presidents, judges, deputy procurators general, procurators and other members of the judicial committee of the Supreme People's Court and the procuratorial committee of the Supreme People's Procuratorate

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- To make a decision on the selection or to recall diplomatic representatives to foreign states
- To introduce military, diplomatic and other special titles and ranks
- To institute and choose the award of state orders, medals and titles of honour
- To make a decision relating to the granting of pardons
- To make decisions on behalf of and when the National People's Congress is in recess
- To decide on the proclamation of a state of war in the event of foreign invasion or due to treaty obligations for collective defence
- To decide on general or partial mobilization or enforcement of martial law
- To exercise such other functions and powers which are authorized by the National People's Congress

Other Committees and Commissions of Inquiry

Besides the standing committee, the National People's Congress has a nationalities committee, a bills committee, a budget committee, a credentials committee and other necessary committees. The NPC can undertake the investigation of certain matters by instituting commissions of inquiry; if not in session, this task is performed by the standing committee. All state organs, people's organizations and citizens concerned are needed to offer the required information to these commissions, if requested. If the National People's Congress is not in session, the standing committee directs the nationalities committee and the bills committee. Each committee comprises a chairman and a certain number of vice-chairmen and other concerned members. Whereas the nature of the committees on bills, budgets and credentials are self explanatory, the work of the nationalities committee requires additional embellishment. Two of the functions of the committees are as follows:

(i) To examine provisions of the bills that concern the affairs of nationalities, which are referred to it by the Congress or its standing committee

(ii) To examine laws and regulations concerning the exercise of autonomy, submitted by different autonomous units for approval by the standing committee

Check Your Progress

6. Who was the first chairman of the standing committee elected in 1954?
7. List the committees under the National People's Congress.

11.5 ANSWERS TO CHECK YOUR PROGRESS QUESTIONS

1. Sun Yat-Sen is also known as the father of the revolution.
2. Yüan Shih-Kai was another very important player in the revolution of 1911. He was a conservative bureaucrat and monarchist. He was appointed by imperial government in 1911 to suppress the rebellion. He became the dictator of China in 1914.
3. Confucius (551–479 BC) was one of the most prominent philosophers in the Chinese political tradition. Confucius believed in the significance of a well thought-out society and in standardizing relationships within that society.
4. The Chinese Communist Party constitution states that Marxism, Leninism and Mao Zedong thoughts are the official party ideologies.
5. Mao saw that his socialist regime was threatened by at least three sources. These were as follows:
   (i) **Feudalism:** This included beliefs in social hierarchy.
   (ii) **Capitalism:** A threat from the West, which included individualism, a money culture, exploitation and so on.
   (iii) **Revisionism:** A Soviet threat, which included Soviet-trained technocrats and their pro-Soviet and elitist attitude.
6. The standing committee, elected by the First National People's Congress on 27 September 1954, comprised a chairman, thirteen vice-chairmen and sixty-five members. Liu Shao-chi was elected chairman.
7. Besides the standing committee, the National People's Congress has a nationalities committee, a bills committee, a budget committee, a credentials committee and other necessary committees.

11.6 SUMMARY

- The 1911 revolution took shape from an uprising that occurred in the south-western province of Szechwan. The revolution was motivated by the court's proposal to nationalize the railway.
- Sun Yat-Sen, also known as the father of the revolution, was responsible for unifying various movements of the Chinese Revolution in the form of the Chinese United League.
- Yüan Shih-Kai was another very important player in the revolution of 1911. He was a conservative bureaucrat and monarchist. He was appointed by imperial government in 1911 to suppress the rebellion.

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- An uprising in Szechwan was the actual beginning of the revolution. Agitated by the policy to nationalize the railways, students came on the streets on 24 August 1911. The students just wanted to avoid any kind of financial loss due to the proposal of nationalization of railways. When the same government refused to negotiate, they started supporting the revolutionaries. Two thirds of China was out of the rule of the Ch'ing Empire by the end of November. Sun Yat-Sen was chosen to be the provincial president of the Republic of China.
- Yüan Shih-Kai was also elected as the prime minister by the national assembly in Beijing. Yüan announced on 3 January 1912 that he would put pressure on the Ch'ing to come down only if he would be made the president of the Chinese republic.
- Four new parties were absorbed by Sun Yat-Sen's Tung-Meng Hui party in the summer of 1912 to create a new party called the Kuomintang, or nationalist party. The Kuomintang won the majority of seats in Parliament in December.
- By using threats, Yüan compelled the Parliament to choose him as the president in October, 1913. So, Yüan Shih-Kai became the dictator of China by the beginning of 1914. Sun Yat-Sen ran away to Japan and the Kuomintang was eliminated as a political party.
- Yüan's desire was to become the emperor of China. However in reality, Yüan had no idea of the intensity of anti-monarchical sentiments in China. Slowly, more and more provinces started participating in the revolution and Yüan had to leave his dream of becoming the emperor in late March, 1916. He died of Uraemia in June.
- Confucius (551–479 BC) was one of the most prominent philosophers in the Chinese political tradition. Confucius (Figure 8.2) believed in the significance of a well thought-out society and in standardizing relationships within that society. The Confucian code of conduct includes loyalty, filial piety, benevolence, righteousness and sacrifice, along with ritual and virtue.
- Centuries later, Mao Zedong's communist revolution proposed to destroy the Confucian social hierarchy.
- The theories of communism and socialist revolution inspired the Chinese communist leader, Mao Zedong, who was along the lines of Russian Revolution, trying to search for a visible path to China's modernization.
- The Great Proletariat Cultural Revolution took place in China between 1966 and1976. People all over the country, in response to the call by Mao and other radical leaders, participated in overthrowing party and state bureaucratic organizations at all levels. The Cultural Revolution ended in 1976, when Mao died and the radical leaders were arrested.

- The National People's Congress (NPC) elects the president of the People's Republic of China (PRC). The same body also elects the Vice-President. Those citizens of China, who have reached 45 years of age, who have voting rights and are eligible to contest elections can apply for the presidential elections.
- The National People's Congress holds a significant position in the Chinese Government. The Constitution of 1954 has rendered the National People's Congress with immense power, and it is the topmost form of state authority and the only legislative authority of China.
- The National People's Congress has a standing committee as well as other committees. The annual session of the Congress is to be convened by the standing committee, which may also call for special sessions of deputies.
- Besides the standing committee, the National People's Congress has a nationalities committee, a bills committee, a budget committee, a credentials committee and other necessary committees. Each committee comprises a chairman and a certain number of vice-chairmen and other concerned members.

11.7 KEY WORDS

- **Confucianism:** Confucius (551–479 BC) was one of the most prominent philosophers in the Chinese political tradition. Confucianism believed in the significance of a well thought-out society and in standardizing relationships within that society. The Confucian code of conduct includes loyalty, filial piety, benevolence, righteousness and sacrifice, along with ritual and virtue.
- **Marxism:** Marxism is a political and economic philosophy which stresses the need to organize society so that the workers own the means of production. It finds its origin in the works of 19th-century German philosophers Karl Marx and Friedrich Engels.
- **Leninism:** Leninism is a political theory first propounded by Russian revolutionary Vladimir Lenin. Leninism stresses on the dictatorship of the proletariat (the working class holds the power).

11.8 SELF ASSESSMENT QUESTIONS AND EXERCISES

Short-Answer Questions

1. List the important features of the Chinese Constitution.
2. How can Confucianism pose a barrier to the development of civil society?

3. What are the official party ideologies of the Chinese Communist Party?
4. What is the difference between Maoism and Marxism-Leninism?
5. Write a short note on the Cultural Revolution.
6. What were the negative effects of the Cultural Revolution

Long-Answer Questions

1. Discuss the significance of the revolution of 1911.
2. Explain the political ideas of Confucius.
3. Analyse the impact of the Cultural Revolution on the political milieu of China.
4. Describe the role of the National People's Congress.

11.9 FURTHER READINGS

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UNIT 12 THE PRESIDENT OF CHINA, STATE COUNCIL AND THE COMMUNIST PARTY OF CHINA

Structure

12.0 Introduction
12.1 Objectives
12.2 The President of China
12.3 State Council
12.4 Communist Party of China and Party Culture in China
12.5 Answers to Check Your Progress Questions
12.6 Summary
12.7 Key Words
12.8 Self Assessment Questions and Exercises
12.9 Further Readings

12.0 INTRODUCTION

In this unit, you will learn about the prominent leader Mao Zedong, whose contributions laid the foundations of the People's Republic of China. The functions of the President and the Vice President of China will be discussed in detail. The role and responsibilities of the State Council will also be delved into. The party system in China differs from that in the West as the former follows a multi-party cooperation system. The nuances of the party system in China will also be discussed in detail in the unit.

12.1 OBJECTIVES

After going through this unit, you will be able to:

- Explain the functions of the President and Vice President of China
- Discuss the responsibilities of the State Council
- Analyse the multi-party cooperation system in China

12.2 THE PRESIDENT OF CHINA

The President of the People's Republic of China is one of the most powerful people in the whole world. His powers are often compared to the American

President. The President of the People's Republic of China is chosen by the National People's Congress. The function was adorned by the Constitution of 1954. In 1954, Mao Zedong was appointed as the President of the People's Republic of China. Since 1949, he was already the President of the Central People's Government.

History

Mao Zedong was without a doubt the uncontested leader of the Communist Party of China, throughout the period 1949–57. Mao's dominant position within the party was already indisputable by the mid-1940s. Not only was Mao the subject of a major personality cult, but by 1943, his leading colleagues also restrained doubts about his theoretical capabilities. In 1945, 'the thought of Mao Zedong' was enshrined in the Communist Party of China's new Constitution. Furthermore, despite the emphasis of party rules on collective leadership, Mao was granted formal powers to act unilaterally in certain cases.

The basis of Mao's rapidly increasing power was the success of party's strategies and policies after start of the Sino-Japanese War in 1937, which he had shaped more than any other leader. The conclusive success of these strategies and policies further boosted his ultimate authority from 1945 to 1949. Much as the victory of 1949 deepened party unity, it also solidified Mao's authority. By virtue of that victory, Mao approximated the ideal magnetic leader whose exceptional abilities were recognized as the key to success, as well as the ideal founder of a new dynasty, with all the implications of compliance that swayed traditional culture. Mao's authority was further improved by his major initiatives in the period 1949–57. The chairman seemingly undertook such initiatives on only three occasions during these years. The first, in October 1950, concerned China's response to the northward march of American forces in Korea. On that occasion, Mao seemingly overrode the doubts raised by most of his associates on account of costs and dangers involved. He secured their consent and deployed the Chinese troops to fight the war. Although the costs of China's Korean venture were indeed high, the advantages that were achieved in security and international peace were widely recognized as out-weighing these costs. This strengthened Mao's reputation for political insight.

The second episode was the chairman's initiative to speed up agricultural cooperation in mid-1955 despite an official decision that was taken a few months earlier to increase the rate of growth. The ensuing basic achievement of collectivity by the end of 1956, once again appeared to demonstrate Mao's insight. Mao's efforts to champion the intellectual criticism of the party through the Hundred Flowers Movement in 1956–57 was not successful. Still, the damage to his prestige was minimized by his sudden shift of position in mid-1957. Both, the broader achievement of the initial period and the specific successes of the Korean expedition rendered Mao's position strong in spite of the setback of the Hundred Flowers Movement. The chairman's strength was symbolized in his moves to break down

the leadership into two fronts. Under these arrangements, Mao would retreat to the 'second front', where he was able to make time to contemplate about matters of theory and overall policy, while being separated from daily operations. Such steps indicated a great level of confidence as well as substantial faith in his leadership. The fact of Mao's unchallenged authority was the key player of the entire structure of elite stability. Apart from the decisive initiatives, Mao served as the final arbiter of policy disputes when his associates were unable to reach a consensus. Under these circumstances, policy advocacy to a substantial degree was aimed at winning the chairman's approval rather than functioning as a tool in the pursuit of supreme power.

Although Mao's authority made leadership unity possible, by no means did it assure unity. Mao's unpredictable behaviour would have worsened existing elite tensions. During the period 1949–57, Mao directed his efforts to increase the unity among elites by adhering to the standards of a unified leadership. This was broadly implemented by emphasizing ability and achievement as criteria for leadership. Unlike others, Mao did not create discord among his colleagues, nor did he demand that they have close factional links with him. Instead, the ranking members of the ruling elite were men of talent and major figures in the history of the Communist Party of China, in their own right.

Liu Shaoqi had quite a distinct career involving work in the so-called white are as behind enemy lines, while Zhou Enlai, the third-ranking figure and a leading government administrator, had even opposed Mao in the early 1930s. Though Mao reserved the right to collective leadership, it did not mean that the simple majority had the right to rule. In the early and mid-1950s, policies were generally based on a variety of factors. All the concerned officials were consulted while making decisions.

President and the Vice-President

The National People's Congress (NPC) elects the president of the People's Republic of China (PRC). The same body also elects the Vice-President. Those citizens of China, who have reached 45 years of age, who have voting rights and are eligible to contest elections can apply for the presidential elections. The president's term of the office of the PRC, is similar to the term of the office of the NPC. His tenure cannot extend beyond two successive terms.

The President of the People's Republic of China, in accord with the judgments of the National People's Congress and the standing committee of the NPC, assigns and eliminates the Premier, Vice-Premiers, Ministers in charge of ministries, or commissions, State Councillors and the Auditor-General and the Secretary-General of the State-Council. He promulgates statutes, confers state medals and titles of honour, issues orders of pardons, announces martial law, declares a state of war and also declares recruitment orders.

The Chinese president obtains foreign diplomatic delegates on behalf of the PRC with pursuance of assessments of the standing committee of the NPC. He assigns and summons plenipotentiary representatives overseas and sanctions, and abrogates treaties along with significant contracts. These are accomplished with foreign nations. The Chinese vice-president helps and supports the president. The vice-president of the PRC may implement fractions of the tasks and authorities of the president, which are assigned to him by the president. The Chinese president, along with the vice-president executes his/her powers and authorities till the successive NCP elects the new president and vice-president, and they take charge of their office.

In a situation where the president of the PRC remains unoccupied, the vice president is supposed to automatically succeed to the presidential office. In case the vice-president's office falls vacant, the NCP shall elect a new vice president to fill his/her position. In cases where the offices of president and that of the vice-president remain unoccupied, the NCP will elect a new president along with a new vice-president. The chairman of the standing committee of the NCP shall act as the President of China for the interim period.

Check Your Progress

1. Who was Mao Zedong?
2. Who elects the president of the People's Republic of China?

12.3 STATE COUNCIL

The state council is the most important administrative authority of the People's Republic of China. Despite the fact that the general organization of the state council is similar to that of the government administrative council, there are certain differences between the two organs. The intermediary committees between the premier and ministers were abolished. Nor was there a provision for council members without portfolio. Differences can also be found in the number of vice premiers, ministries and commissions. The state council resembles the Soviet council of the people's commissars in some respects, but the Chinese communist government chooses to retain the traditional pattern of ministries and commissions. Even though the premier looks after and supervises the working of the state council, any resolution has to be deliberated and adopted at the Council's plenary or executive meetings. Plenary meetings are usually held once a month. They are attended by the premier, vice-premiers, the secretary general, ministers and heads of commissions. The members who attend the executive meetings are limited to the premier, vice-premiers and the secretary general, who constitute a so-called 'inner cabinet'.

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Authority and Responsibilities of the State Council

The authority and responsibilities of the state council are as follows:

- To adopt measures pertaining to administration and to issue and implement decisions and orders
- To propose and forward bills to the National People's Congress or its standing committee
- To organize and direct the work of the ministries and commissions under the council and that of local administrative bodies all over the country
- To amend or cancel improper directives and instructions issued by ministries, commissions as well as local administrative organs
- To implement the national economic policies and points of the state budget
- To direct the external affairs as well as international and national trade
- To monitor cultural, educational and public health work, as well as the affairs concerning national minorities and overseas Chinese people
- To secure the interests of the state, ensure law and order and protect the rights of the citizens
- To strengthen the national defence forces
- To sanction the stages and limits of independent prefectures, districts, autonomous districts and municipalities
- To hire or eliminate administrative staff according to the provisions of law
- To execute other authority and responsibilities that are vested in the state council by the National People's Congress or its standing committee
- According to the Organic Law of State Council of 1954, the state council has the power to appoint and remove the administrative personnel under the following groupings:
- Deputy secretaries general of the state council, vice-ministers and assistants to the ministers, deputy heads and members and commissions, heads and deputy heads of departments and directors and deputy directors of bureaus under ministries and commissions
- Heads and deputy heads of boards, directors and deputy directors of bureaus under the people's councils of provinces and municipalities directly subject to the central authority
- Commissioners and special administrative offices
- Officials in autonomous regions with the rank corresponding to those listed under categories 2 and 3

- Counsellors of diplomatic missions and consul generals
- Presidents and vice-presidents of national universities and colleges
- Other officials corresponding to the above ranks

Even though the state council has the vast power of appointment and removal of officials, those on local levels are practically decided upon by the local government councils, which submit them to the state council for verification as a matter of procedural requirement.

12.4 COMMUNIST PARTY OF CHINA AND PARTY CULTURE IN CHINA

The power of the government is exercised through the Communist Party within the country, and by the Central People's Government and their partners in the provinces and at the local level.

Under this kind of the dual system of leadership, every local office is jointly managed by the local leader as well as the leader of the corresponding office in the ministry, which exists at the higher level. The members of the People's Congress are elected by people at the county level. The People's Congress holds the responsibility of managing the local government and also chose members for the Provincial, or the municipal, People's Congress. In turn, the Provincial People's Congress is responsible for electing members of the National People's Congress. This body meets in the month of March every year in Beijing. However, it is the ruling Communist Party which plays the significant role in selecting the 'right' candidates for the polls at both the local and higher level congress'.

China is mainly a multi-party state but under the leadership of the Communist Party of China (CPC). Its system is very similar to some of the popular state systems of the former Communist-era Eastern European countries such as the National Front of Democratic Germany. Under the system of one country and two party, Hong Kong and Macau are categorized as Special Administrative Regions. Earlier, both were the colonies of the European powers. At present, they have a different political system as compared to China and both also run under the multi-party system. In China, in practice, the Communist Party of China is the only party that holds formidable power at the national level. It dominates all levels of governance to the core that China is often mistaken for being a one-party state. There are eight more, through small, parties that operate in China. But, they only have a limited power at the national level. In fact, they have to operate under the Communist Party of China and accept its leading role to be able to even exist. The Chinese system does allow few non-communist party members to participate in the system and also certain smaller parties within the National People's Congress but they are all vetted by the Communist Party of China.

The Constitution of China also allows some opposition to operate. But the Communist Party of China exercises its control over the political system. In this way, the opposition ceases to exist. For instance, people's congress is elected through popular vote. Any official body above that is appointed by the congress itself. This means that even though independent persons and members of opposition can sometime be elected to the lowest level of the Congress, they may hardly be able to come together or organize themselves to a point where they themselves can elect members to the higher level without the approval of members of the Communist Party. Since they do not really have an effective power, it only discourages outsiders from contesting polls for the people's congress even at the bottom level, which means that mainly the communist members dominate the body.

Also, despite the fact the China has no law that formally bans non-religious organizations, it also has no law which could grant non-communist parties the corporate status. Thus, any opposition party, if it does exist even hypothetically, would not have the legal backing to assemble funds or have any registered property in the name of the party.

Significantly, the Chinese Constitution offers a wide range of laws that have been used in the past against members of opposition parties which those of the Communist Party of China perceived as threatening. These include members of the China Democracy Party. Charges related to subversion, sedition, and releasing state secrets can be slapped on members of opposition parties and, since the Communist Party controls the legislative and the judicial processes, it means that communists can legitimately target any person or group.

Party System in China

For modern democratic politics, the political party system is an essential constituent. The nature, national conditions and social growth are the factors that indicate the configuration of political governance that a country should adopt. The configuration of parties in countries around the world is a characteristic of their divergent cultures. China has accepted multi-party cooperation and political consultation as its political party system, in the guidance of the Communist Party of China (CPC), which is completely different than the multi-party systems of Western countries. In the Western countries, there is a struggle for power between the two parties and it is also dissimilar to the order of a single party that is adopted by some countries. The implementation and growth of the practice of multi-party cooperation has been continuous throughout the struggle of the Chinese revolution, through formation and reformation. It is an elementary system of politics that is aimed at going with the stipulations in China. It is a socialist political party system, which has Chinese peculiarities and has the vital constituent of Chinese socialist democratic politics. The Chinese constitution states that 'the existence and growth of the multi-party cooperation and political consultation system that is led by the Communist Party of China will go on for a long time.' All democratic parties and the Communist

Party of China ought to perceive the constitution as the primary and the elementary standard for their demeanour and should maintain the pride of the constitution and make its realization certain.

There is the CPC and eight additional political parties under China's multi-party cooperation system. These eight democratic parties are as follows:

i. Revolutionary Committee of the Chinese Kuomintang
ii. China Democratic League
iii. China National Democratic Construction Association
iv. China Association for Promoting Democracy
v. Chinese Peasants and Workers Democratic Party
vi. China Zhi Gong Dang
vii. Jiu San Society
viii. Taiwan Democratic Self-Government League

The Chinese People's Political Consultative Conference (CPPCC) is a vital institution of multi-party cooperation and political consultation under leadership of the CPC. Based on the principle of 'long-term coexistence, mutual supervision, treating each other with sincerity and sharing each other's weal and woe,' the CPC and the eight democratic parties work jointly in developing socialism with Chinese attributes. As a result, these promote the main factors of the 'multi-party cooperation system led by the CPC. Under the authority of CPC, the remaining eight parties exhibit active participation in all affairs of the state.' The multi-party cooperation system has tremendous political benefits, strength of endurance and is remarkably active in the Chinese politics and society.

The multi-party cooperation system recognizes the position and purposes of the Communist Party of China and the eight extra political parties. It regards them as part of China's fundamental political system, which is essential for the political survival of the state and the association between parties.

The Communist Party of China embraces the foremost decision making position. Its leadership position emerged from and was amalgamated through the extensive period of revolution, creation and reformation and due to the inclination of history and populace. All the way through its struggle for over eighty years, the Communist Party of China led the people of China from beginning to the end of a novel democratic revolution for achieving the country's independence and freedom of the people; established the rule of the state where the country was run by the people, along with protecting the national unification and harmony of every cultural group. This party founded the socialist system together with completing the most altruistic social revolution in history of China; in addition to commencing the Chinese-style socialist foundation and framed a truthful path towards the route of national opulence as well as a blissful life for the nation and its citizens.

The area of China is 9.6 million sq kms and it has a population of 1.3 billion people and fifty-six ethnic tribes. A powerful centre of control leads this huge and densely populated country. The expansion of China's highly developed productive forces, the course of China's sophisticated culture and primary concerns of the vast majority of Chinese people is symbolized by the CPC. The powerful leadership by the Communist Party of China is a deep-seated assurance for China's socialist transformation, national alliance, communal harmony and unity. This is desired by those belonging to all ethnicities, which emerged as a result of years of evolution and transformation.

There are eight democratic parties who partake in state affairs. The definite role played by the eight democratic parties along with the intrinsic necessities of the people's democratic dictatorship in Chinese politics, affirms their duties as participating groups. The Communist Party of China is an important trademark of people's democracy, due to the following factors:

- The political coalitions of socialist working people
- Engineers of socialism
- Loyalists who hold up socialism, with whom these parties uphold ties
- An array of the people with their contribution in state matters and leadership

The matters of the state chiefly take the following forms:

- Discussion on elementary state policy
- Contribution in the execution of power of the state
- The election of leaders of the state
- Management of state affairs along with formulation and implementation of the state policy
- Course of actions, laws and guidelines

The position, rights and privileges of these parties are guarded by the constitution. A novel association of unison and collaboration has been recognized amidst the Communist Party of China and the eight democratic parties. The Communist Party of China has made companions with these democratic parties in extensive periods of common struggle. Its elemental hypothesis, course and knowledge have been settled on by democratic parties and hence the structure of socialism in the company of Chinese traits has turned out to be the common aim of every party of China. In an open-minded, secure and harmonious political environment, the Communist Party of China upholds extensive political collaboration with democratic parties. It concentrates on their development in politics and material matters and directs them in unison towards their progression.

The collaboration of the CPC, in addition to the democratic parties is rich in matter. First, the Communist Party of China seeks advice from democratic parties regarding core principles, laws, procedures and problems. Second, members of

democratic parties have access to a fixed number of positions in the powerful hierarchy of the state. It is their responsibility to carry out their duties, according to the law. Third, besides judicial organs, members of democratic parties hold critical offices within the central and local governments. The government of the people at various hierarchies communicates with democratic parties, through a number of means, to utilize their participation and relate it to the affairs of the state. Fourth, democratic parties participate actively in all debates related to significant issues of the state via the Chinese People's Political Consultative Conference. Lastly, the Communist Party of China assists all democratic parties in activities related to development of the country, transformation of the society and in improving the economy. These are the main purposes of democratic parties as participating parties, moreover, a classic feature of China's multi-party cooperation system.

All democratic parties and the Communist Party of China remain updated about each other's affairs and actions. This parameter in political management is affected through exchanging outlooks and conveying appreciations, criticisms and proposals. Apparent of the fact that the Communist Party of China is the most important decision making party, it surely requests for the most part, directs, advices and supervises the democratic parties and vice-versa. The democratic administration largely covers the execution of laws and regulations of the constitution, the formulation and execution of important laws and policies of the Communist Party of China and the government, the vocation of CPC committees at a variety of levels, in addition to CPC-member officials' presentation of sense of duty and spotless governance. The organization of democratic parties is unique. Nevertheless, it is very important for the escalation and improvement of the CPC's leadership and betterment of the socialist supervision system.

The multi-party cooperation system has shaped a new type of political party system for humankind, a system which is one of its kinds. Under the guidelines of this system, the Communist Party of China and the other eight parties work collectively and are aware of each other's activities. The Communist Party of China rules the country and other parties that contribute in state affairs and are consistent with the law, as opposed to ruling the country sequentially. This kind of system works in harmony with the system of people's Congresses to make sure that its people are empowered to decide in matters of the state. This type of democracy is not enjoyed only by a few people.

The importance and roles of the Chinese multi-party cooperation system are listed as follows:

- **Political participation:** The multi-party cooperation system does the following:
  - o Puts together a range of social forces within the system of politics
  - o Provides a structured medium to democratic parties to participate in the political system

- o Amalgamates and develops the groundwork for the people's democratic dictatorship
- o Channels the interest of every sector
- o Groups the understanding of the people
- o Seeks proposals widely by promoting the decisions of the ruling party and the government, based on science and democracy

Furthermore, it presses forward the constructive and steady expansion of socialist democracy on the strength of upholding social solidity.

- **Expression of interests:** The People's Republic of China is a large country with a dense population, which consists of social classes, stratum and factions. The culture consists of a large number of dissimilarities and variances that are based on common fundamental welfare. In particular, seeing the growth of the socialist market economy, the differences within the economic system keep on increasing. The mixture within the society and the general welfare experience a large number of alterations in the people's ideas. The multi-party cooperation system is capable of proficiently reflecting the welfares, needs and burden of the entire social segment. This system creates and expands channels for expressing interests and upholds social synchronization and solidity.
- **Social integration:** China's demanding and multifaceted mission of transformation needs a political system to facilitate a powerful role in social integration. Merging the prevalent cooperation with democratic parties along with the firm leadership of the CPC, the multi-party cooperation system has emerged as a significant symbol of social unity. Focusing on the final goal of structured socialism with Chinese attributes, the Communist Party of China (assisted by democratic parties) crafts strong political identification. It also streamlines the progress of optimum utilization of political assets, synergizes the interests of all sectors and guides and directs the entire social structure towards achieving progress and development.
- **Democratic supervision:** Shared management amid democratic parties and the Communist Party of China encourages the growth of the administrative functions in the system and evades unusual inadequacies, which arise due to administrative discrepancies. Democratic parties cater to the most obvious interests and needs of the relevant groups of people; provide an all-round supervision separately from the self-supervision by the Communist Party of China. This helps in the advancement of the administration of the ruling party, based on the tenets of science and democracy. It is aimed at dispelling negative forces like bureaucracy and similar phenomena and consequently strengthening and improving every aspect of the functioning of the ruling party.

The multi-party cooperation system in China gives an identity to the basic requirements of democracy within a society. It tries to ensure a democratic future for the people, supported by the exclusive facilities of the Chinese political system. In synchronization with the current scenario, the most important reason for advocating socialist democracy is adhering to and streamlining the multi-party cooperation system, led by the Communist Party of China. This involves increasing the contribution of the people to active politics, increasing the number of channels for expressing social interest and creating an amicable environment for development of the society.

Check Your Progress

3. Mention two responsibilities of the State Council.
4. Name the dominant party of China.
5. How is the People's Congress elected in China?
6. Apart from the CPC, which other political parties operate in China?
7. To whom does the multi-party cooperation system in China give an identity?

12.5 ANSWERS TO CHECK YOUR PROGRESS QUESTIONS

1. Mao Zedong was without a doubt the uncontested leader of the Communist Party of China, throughout the period 1949–57. In 1954, Mao Zedong was appointed as the President of the People's Republic of China.
2. The National People's Congress (NPC) elects the president of the People's Republic of China (PRC).
3. Two responsibilities of the state council are as follows:
   (i) To adopt measures pertaining to administration and to issue and implement decisions and orders
   (ii) To propose and forward bills to the National People's Congress or its standing committee
4. The Communist Party of China is the dominant party in China
5. The members of the People's Congress are elected by people at the county level.
6. The political parties that operate under China's multi-party cooperation system are:
   (i) Revolutionary Committee of the Chinese Kuomintang
   (ii) China Democratic League
   (iii) China National Democratic Construction Association

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(iv) China Association for Promoting Democracy
(v) Chinese Peasants and Workers Democratic Party
(vi) China Zhi Gong Dang
(vii) Jiu San Society
(viii) Taiwan Democratic Self-Government League

7. The multi-party cooperation system in China gives an identity to the basic requirements of democracy within a society. It tries to ensure a democratic future for the people, supported by the exclusive facilities of the Chinese political system.

12.6 SUMMARY

- The President of the People's Republic of China is one of the most powerful people in the whole world. His powers are often compared to the American President. The President of the People's Republic of China is chosen by the National People's Congress. The function was adorned by the Constitution of 1954. In 1954, Mao Zedong was appointed as the President of the People's Republic of China.
- Mao Zedong was without a doubt the uncontested leader of the Communist Party of China, throughout the period 1949–57. The basis of Mao's rapidly increasing power was the success of party's strategies and policies after start of the Sino-Japanese War in 1937, which he had shaped more than any other leader. Mao's initiative to speed up agricultural cooperation in mid-1955 also showed his insight.
- The state council is the most important administrative authority of the People's Republic of China. Despite the fact that the general organization of the state council is similar to that of the government administrative council, there are certain differences between the two organs. Differences can be found in the number of vice premiers, ministries and commissions
- The power of the government is exercised through the Communist Party within the country, and by the Central People's Government and their partners in the provinces and at the local level.
- Under this kind of the dual system of leadership, every local office is jointly managed by the local leader as well as the leader of the corresponding office in the ministry, which exists at the higher level.
- China is mainly a multi-party state but under the leadership of the Communist Party of China (CPC). In China, in practice, the Communist Party of China is the only party that holds formidable power at the national level. It dominates all levels of governance to the core that China is often mistaken for being a one-party state. There are eight more, through small, parties that operate in

China. But, they only have a limited power at the national level. In fact, they have to operate under the Communist Party of China and accept its leading role to be able to even exist.

- China has accepted multi-party cooperation and political consultation as its political party system, in the guidance of the Communist Party of China (CPC), which is completely different than the multi-party systems of Western countries

12.7 KEY WORDS

- **Hundred Flowers Movement**: Hundred Flowers Movement was a movement in China in 1956 wherein people were encouraged to openly express their opinion regarding the communist regime.
- **Martial Law**: It is the imposition of direct military control of normal civil functions, usually done at the time of a temporary emergency.
- **Sedition:** Sedition refers to conduct or speech that incites people against established authority. It often includes subversion of the constitution.
- **Socialism:** Socialism refers to the political and economic theory of social organization which stresses that the means of production, distribution, and exchange should be owned or regulated by the community as a whole.

12.8 SELF ASSESSMENT QUESTIONS AND EXERCISES

Short-Answer Questions

1. What are the functions of the President of China?
2. What are the functions of the National People's Congress?
3. How does the party system in China differ from the West?
4. Write a short note on China's multi-party cooperation system.

Long-Answer Questions

1. Analyse the contribution of Mao as the leader of the Communist Party of China.
2. Discuss the responsibilities of the State Council.
3. Explain the party system and party culture in China.

NOTES

12.9 FURTHER READINGS

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BLOCK - V
ADMINISTRATIVE SYSTEM OF CANADA

NOTES

UNIT 13 ADMINISTRATIVE SYSTEM OF CANADA, CONSTITUTION AND DOMINION EXECUTIVE

Structure

13.0 Introduction
13.1 Objectives
13.2 Administrative System of Canada
13.3 Constitution
13.4 Dominion Executive
13.5 Answers to Check Your Progress Questions
13.6 Summary
13.7 Key Words
13.8 Self Assessment Questions and Exercises
13.9 Further Readings

13.0 INTRODUCTION

In this unit, you will learn about the administrative system of Canada. The Canadian system of parliamentary government consists of three elements: the Crown, the Senate and the House of Commons. The prominent features of the Canadian system of parliamentary government will also be discussed in detail. Further on in the unit, a history of the Constitution of Canada and the provisions it provides for the Aboriginal peoples. The role of the Queen, the Cabinet and the Prime Minister will also be delved into.

13.1 OBJECTIVES

After going through this unit, you will be able to:

- Understand the features of the administrative system of Canada
- Discuss about the principles set forth by the Canadian Constitution
- Explain the role of the Queen, the Cabinet and the Prime Minister

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13.2 ADMINISTRATIVE SYSTEM OF CANADA

Canada is a parliamentary democracy: its system of government holds that the law is the supreme authority. The Constitution Act, 1867, which forms the basis of Canada's written constitution, provides that there shall be one Parliament for Canada, consisting of three distinct elements: the Crown, the Senate and the House of Commons. However, as a federal state, responsibility for lawmaking in Canada is shared among one federal, ten provincial and three territorial governments.

The power to enact laws is vested in a legislature composed of individuals selected to represent the Canadian people. Hence, it is a 'representative' system of government. The federal legislature is bicameral: it has two deliberative 'houses' or 'chambers' — an upper house, the Senate, and a lower house, the House of Commons. The Senate is composed of individuals appointed by the Governor General to represent Canada's provinces and territories. Members of the House of Commons are elected by Canadians who are eligible to vote. The successful candidates are those who receive the highest number of votes cast among the candidates in their electoral district in this single-member, simple-plurality system.

Canada is also a constitutional monarchy, in that its executive authority is vested formally in the Queen through the Constitution. Every act of government is carried out in the name of the Crown, but the authority for those acts flows from the Canadian people. The executive function belongs to the Governor in Council, which is, practically speaking, the Governor General acting with, and on the advice of, the Prime Minister and the Cabinet.

Political parties play a critical role in the Canadian parliamentary system. Parties are organizations, bound together by a common ideology, or other ties, which seek political power in order to implement their policies. In a democratic system, the competition for power takes place in the context of an election.

Finally, by virtue of the Preamble to the Constitution Act, 1867, which states that Canada is to have 'Constitution similar in Principle to that of the United Kingdom', Canada's parliamentary system derives from the British, or 'Westminster', tradition. The Canadian system of parliamentary government has the following essential features:

- Parliament consists of the Crown and an upper and lower legislative Chamber;
- Legislative power is vested in 'Parliament'; to become law, legislation must be assented to by each of Parliament's three constituent parts (i.e., the Crown, the Senate and the House of Commons);
- Members of the House of Commons are individually elected to represent their constituents within a single electoral district; elections are based on

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a single-member constituency, first-past-the-post or simple-plurality system (i.e., the candidate receiving more votes than any other candidate in that district is elected);

- Most Members of Parliament belong to and support a particular political party;
- The leader of the party having the support of the majority of the Members of the House of Commons is asked by the Governor General to form a government and becomes the Prime Minister;
- The party, or parties, opposed to the government is called the opposition (the largest of these parties is referred to as the 'official' opposition);
- The executive powers of government (the powers to execute or implement government policies and programs) are formally vested in the Crown, but effectively exercised by the Prime Minister and Cabinet, whose membership is drawn principally from Members of the House belonging to the governing party;
- The Prime Minister and Cabinet are responsible to, or must answer to, the House of Commons as a body for their actions; and
- The Prime Minister and Cabinet must enjoy the confidence of the House of Commons to remain in office. Confidence, in effect, means the support of a majority of the House.

Check Your Progress

1. Who elects the members of the House of Commons?
2. List two prominent features of the Canadian system of parliamentary government.

13.3 CONSTITUTION

Canada was created by an act of the Parliament of the United Kingdom called the British North America Act, 1867 (now known as the Constitution Act, 1867) uniting the British colonies of the United Province of Canada, Nova Scotia, and New Brunswick.

The Constitution of Canada includes the *Constitution Act, 1867,* and the *Constitution Act, 1982*. It is the supreme law of Canada. It reaffirms Canada's dual legal system and also includes Aboriginal rights and treaty rights.

The Constitution sets out the basic principles of democratic government in Canada when it defines the powers of the three branches of government:

- the executive
- the legislative
- the judiciary

The Queen has the **executive** power in Canada, but in Canadian democratic society the Queen's powers are exercised by constitutional convention on the advice of Ministers who enjoy the confidence of the House of Commons. Together, the Prime Minister and other Ministers form the cabinet, which is responsible to Parliament for government business. Ministers are also responsible for government departments, such as the Department of Finance and the Department of Justice. When we say 'the government', we are usually referring to the executive branch.

Parliament is the **legislative** branch of the federal government. Parliament consists of the Queen (who is usually represented by the Governor General), the Senate and the House of Commons. Bills are debated and passed by the Senate and the House of Commons. The Governor General must also give royal assent to a bill in order for it to become a law. By constitutional convention, royal assent is always given to bills passed by the Senate and the House of Commons.

The Canadian Constitution also includes provisions relating to the **judicial** branch of government, composed of judges. The judiciary must interpret and apply the law and the Constitution, and give impartial judgments in all cases, whether they involve public law, such as a criminal case, or private law, such as a dispute over a contract.

The Constitution only provides for federally appointed judges. Provincial judges are appointed under provincial laws.

Federal System

The Parliament of Canada and the provincial and territorial legislatures both have the authority or jurisdiction to make laws. Parliament can make laws for all of Canada, but only about matters the Constitution assigns to it. A provincial or territorial legislature can only make laws about matters within the province's borders.

The federal Parliament deals mainly with issues that concern Canada as a whole: trade between provinces, national defence, criminal law, money, patents, and the postal service. It is also responsible for the three territories: Yukon, the Northwest Territories, and Nunavut. Federal law allows territories to elect councils with powers like those of the provincial legislatures.

The provinces have the authority to make laws about education, property, civil rights, the administration of justice, hospitals, municipalities, and other local or private matters within the provinces.

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There are also local or municipal governments. They are created under provincial laws and can make bylaws that regulate a variety of local matters: zoning, smoking, pesticide use, parking, business regulations, and construction permits.

Aboriginal peoples in Canada have different types of government. For example, First Nations can have a range of governmental powers over reserve lands under the federal *Indian Act.* Other Aboriginal governments, such as self-governments, exercise these powers as a result of agreements they have negotiated with the federal and provincial or territorial governments.

The *Constitution Act* includes protection for the rights of the Aboriginal peoples (Indian, Inuit, and Métis) of Canada. Section 35 of the *Constitution Act* recognizes and affirms Aboriginal rights, which are rights related to the historical occupancy and use of the land by Aboriginal peoples. This is to help Aboriginal peoples preserve their customs and traditions for future generations, as continuing cultural practices. Section 35 also recognizes and affirms treaty rights, which are specifically set out in agreements between the Crown and particular groups of Aboriginal people.

Bijuralism

Canada is a bijural country – that means it has both common and civil law systems. Matters of private law in Quebec are governed by the civil law, while the common law applies in the other provinces. Federal bills and regulations must respect both types of systems, and the legal concepts within these laws must be expressed in both English and French.

13.4 DOMINION EXECUTIVE

The Queen (Queen Elizabeth II) is the sovereign and the Head of State of Canada. The Canadian Crown is represented by the Governor General. The Governor General fulfils the responsibilities of the Head of State by guaranteeing that the country has a Prime Minister, who will represent Canada abroad, receive foreign leaders as well as reinforce the national identity.

The Cabinet is a small group of parliamentarians, also known as Ministers, who play the role of governing the country. The members of the Cabinet are chosen by the Prime Minister. The Cabinet plays an important role in the formation of government policies. Generally, members of the House of Commons serve as Cabinet Minister. However, it is to be noted that at least one Senator serves as a Cabinet Minister and the Leader of the Government in the Upper House. The Prime Minister ensures that each Cabinet Minister has a portfolio such as Foreign Affairs or Health. Each portfolio corresponds to a particular department or agency. The Cabinet Ministers need to ascertain that the departments are adhering to the law and the government policies are being implemented.

Prime Minister

The Canadian political system looks at the Prime Minister as the elected head of the government, whose powers are equal to the powers granted to the monarch in the old days. The power associated with the running of the country on a daily basis is known as executive power; the Prime Minister is the head of the executive branch of the Canadian government.

The Prime Minister makes decisions which manage the functioning of the government. These include recruitment of government officials, handing over projects to the different departments, and representing the Canadian government both on the local level and the international level.

In order to achieve these goals, the Prime Minister appoints a cabinet of approximately thirty members. These days the size of the cabinet has grown considerably; therefore, the cabinet is often split into smaller cabinet committees. Each cabinet minister focuses on a specific area such as finance, healthcare, foreign relations, etc. The cabinet makes certain decisions and the Prime Minister ratifies the decisions of the cabinet. In addition to the cabinet, the Prime Minister also has advisors who are often known as the Prime Minister's Office or the PMO. The PMO includes staffers such as the prime minister's chief of staff, press secretary, communications advisers, lawyers, and other non-politicians who have earned his loyalty and trust. The current Canadian Prime Minister is Justin Trudeau.

Check Your Progress

3. When was the constitution of Canada created?
4. What is known as the legislative branch of the federal government?
5. What is the role of the Governor General?
6. Who selects the members of the cabinet?
7. Who qualifies as a member of the Prime Minister's Office?

13.5 ANSWERS TO CHECK YOUR PROGRESS QUESTIONS

1. The members of the House of Commons are elected by Canadians who are eligible to vote.
2. The prominent features of the Canadian system of parliamentary government are:
    - Parliament consists of the Crown and an upper and lower legislative Chamber;

- Legislative power is vested in 'Parliament'; to become law, legislation must be assented to by each of Parliament's three constituent parts (i.e., the Crown, the Senate and the House of Commons)

3. Canada was created by an act of the Parliament of the United Kingdom called the British North America Act, 1867 (now known as the Constitution Act, 1867).
4. The Parliament is known as the legislative branch of the federal government.
5. Parliament consists of the Queen (who is usually represented by the Governor General), the Senate and the House of Commons. Bills are debated and passed by the Senate and the House of Commons. The Governor General must also give royal assent to a bill in order for it to become a law. By constitutional convention, royal assent is always given to bills passed by the Senate and the House of Commons.
6. The Prime Minister selects the members of the Cabinet.
7. The Prime Minister's Office includes staffers such as the prime minister's chief of staff, press secretary, communications advisers, lawyers, and other non-politicians who have earned the loyalty and trust of the Prime Minister.

13.6 SUMMARY

- Canada is a parliamentary democracy: its system of government holds that the law is the supreme authority. The Constitution Act, 1867 provides that there shall be one Parliament for Canada, consisting of three distinct elements: the Crown, the Senate and the House of Commons.
- The federal legislature is bicameral: it has two deliberative 'houses' or 'chambers' — an upper house, the Senate, and a lower house, the House of Commons.
- Canada is also a constitutional monarchy, in that its executive authority is vested formally in the Queen through the Constitution. Every act of government is carried out in the name of the Crown, but the authority for those acts flows from the Canadian people.
- Canada was created by an act of the Parliament of the United Kingdom called the British North America Act, 1867 (now known as the Constitution Act, 1867).
- The Queen has the executive power in Canada, but in Canadian democratic society the Queen's powers are exercised by constitutional convention on the advice of Ministers who enjoy the confidence of the House of Commons. Together, the Prime Minister and other Ministers form the cabinet, which is responsible to Parliament for government business.

- Parliament is the legislative branch of the federal government. Parliament consists of the Queen (who is usually represented by the Governor General), the Senate and the House of Commons. Bills are debated and passed by the Senate and the House of Commons. The Governor General must also give royal assent to a bill in order for it to become a law. By constitutional convention, royal assent is always given to bills passed by the Senate and the House of Commons.
- The Canadian Constitution also includes provisions relating to the judicial branch of government, composed of judges. The judiciary must interpret and apply the law and the Constitution, and give impartial judgments in all cases.
- The federal Parliament deals mainly with issues that concern Canada as a whole: trade between provinces, national defence, criminal law, money, patents, and the postal service.
- The *Constitution Act* includes protection for the rights of the Aboriginal peoples (Indian, Inuit, and Métis) of Canada. Section 35 of the *Constitution Act* recognizes and affirms Aboriginal rights, which are rights related to the historical occupancy and use of the land by Aboriginal peoples.
- Canada is a bijural country – that means it has both common and civil law systems. Matters of private law in Quebec are governed by the civil law, while the common law applies in the other provinces.
- The Queen (Queen Elizabeth II) is the sovereign and the Head of State of Canada. The Canadian Crown is represented by the Governor General. The Governor General fulfills the responsibilities of the Head of State by guaranteeing that the country has a Prime Minister, who will represent Canada abroad, receive foreign leaders as well as reinforce the national identity.
- The Cabinet is a small group of parliamentarians, also known as Ministers, who play the role of governing the country. The members of the Cabinet are chosen by the Prime Minister. The Cabinet plays an important role in the formation of government policies.
- The Canadian political system looks at the Prime Minister as the elected head of the government, whose powers are equal to the powers granted to the monarch in the old days. The Prime Minister makes decisions which manage the functioning of the government. These include recruitment of government officials, handing over projects to the different departments, and representing the Canadian government both on the local level and the international level.

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13.7 KEY WORDS

- **Senate:** The Senate, also known as the Lower House, is composed of individuals appointed by the Governor General to represent Canada's provinces and territories.
- **Aboriginal Peoples:** In Canada, it is a collective name given to the original inhabitants of North America. The Canadian Constitution recognizes three groups of Aboriginal people, namely, Indians, Inuit, and Métis.
- **Bijuralism:** Bijuralism refers to the coexistence of both common and civil law systems. Canada is a bijural coutry; matters of private law in Quebec are governed by the civil law, while the common law applies in the other provinces.
- **Portfolio:** Portfolio refers to the position and duties of a Minister or Secretary of State.

13.8 SELF ASSESSMENT QUESTIONS AND EXERCISES

Short-Answer Questions

1. What are some of the measures taken for the protection of Aboriginal people in Canada?
2. Why is Canada known as a bijural country?
3. What is the role of the Prime Minister of Canada?

Long-Answer Questions

1. Discuss the features of the Canadian system of parliamentary government.
2. Analyse the powers of the three branches of the government as defined by the Constitution.
3. Explain the functions of the Queen, Cabinet Ministers and the Prime Minister.

13.9 FURTHER READINGS

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UNIT 14 THE CANADIAN DOMINION PARLIAMENT, JUDICIAL SYSTEM AND CANADIAN FEDERALISM

Structure

14.0 Introduction
14.1 Objectives
14.2 Canadian Dominion Parliament
14.3 Judicial System
14.4 Canadian Federalism
14.5 Answers to Check Your Progress Questions
14.6 Summary
14.7 Key Words
14.8 Self Assessment Questions and Exercises
14.9 Further Readings

14.0 INTRODUCTION

In this unit, you will learn about the various components of the Parliamentary system in Canada and the prominent positions in the parliament. The unit will also discuss the structure of judicial system in the country, including the functions of the Supreme Court, the provincial and territorial courts, and the administrative boards and tribunals. Further on in the unit, the different levels of the government in Canadian federalism will also be discussed.

14.1 OBJECTIVES

After going through this unit, you will be able to:

- Discuss the components of Canada's Parliamentary system
- Examine the structure of the judicial system of Canada
- Describe the role and functions of different levels on government in Canadian federalism

14.2 CANADIAN DOMINION PARLIAMENT

Canada's parliamentary system is open and democratic. It offers the opportunity for people to give their input and it is designed to make sure proposals for laws

are carefully considered. It consists of three parts: the Queen, the Senate and the House of Commons. They work together to make the laws for our country. The executive branch consists of the Queen, the Prime Minister and Cabinet, and the departments of government. They implement the laws. The legislative branch makes the laws, and the judicial branch — which is not part of Parliament — interprets them.

Canada's Parliamentary System

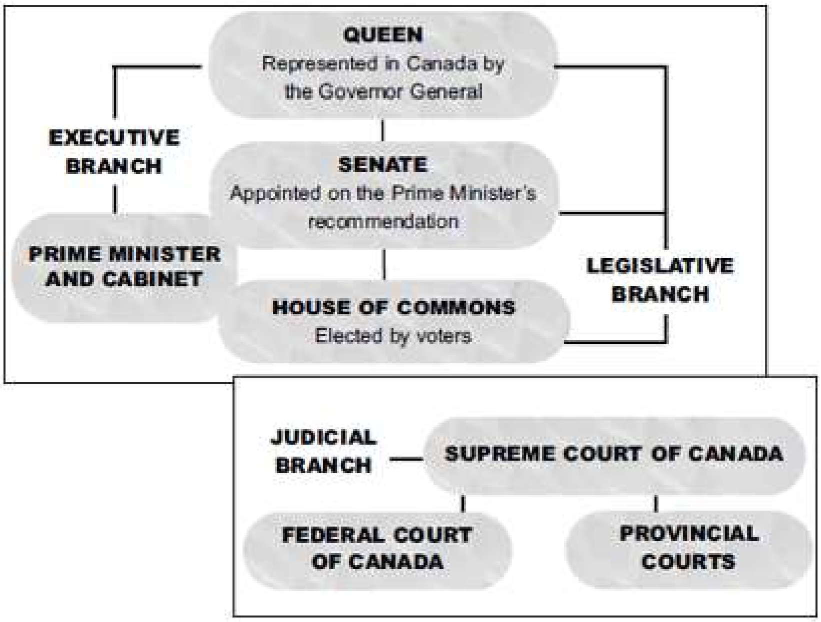


Fig. 14.1 *Canadian Parliamentary System*

The Queen

Canada is a constitutional monarchy. This means that the laws governing Canada recognize the Queen as the formal Head of State. All federal laws are made in the Queen's name. She also performs many important ceremonial duties when visiting Canada.

The Governor General

The Governor General is the Queen's representative in Canada. The Queen appoints the Governor General on the advice of the Prime Minister. The Governor General usually serves for five years. One of the most important roles of the Governor General is to ensure that Canada always has a Prime Minister. For example, if no party had a clear majority after an election, or if the Prime Minister were to die in office, the Governor General would have to choose a successor.

The Governor General acts on the advice of the Prime Minister and Cabinet. The duties of the Governor General include: summoning, opening and ending

sessions of Parliament; reading the Speech from the Throne; giving Royal Assent to bills; signing state documents; and dissolving Parliament for an election.

The Senate

The Senate studies, amends and either rejects or approves bills passed by the House of Commons. It can also introduce its own bills, except those to spend public money or impose taxes, which must be introduced in the House of Commons. No bill can become law until it has been passed by the Senate. Senators also study major social, legal and economic issues through their committee work.

One of the duties of the Senate is to represent the interests of Canada's regions, provinces, territories and minority groups. Seats in the Senate are distributed to give each major region of the country equal representation.

The Senate has 105 members. Senators are appointed by the Governor General on the recommendation of the Prime Minister and hold office until age 75.

The House of Commons

Many laws in Canada first begin as bills in the House of Commons. In the Commons Chamber, Members devote most of their time to debating and voting on bills. The Chamber is also a place where Members represent constituents' views, discuss national issues and call on the government to explain its actions.

To become a Member of Parliament, you must first run in a federal election, which is held every four years. In each of the country's 338 constituencies, or ridings, the candidate who gets the most votes is elected to the House of Commons, even if he or she gets less than half of the total votes.

Seats in the House of Commons are distributed roughly in proportion to the population of each province and territory. In general, the more people in a province or territory, the more Members it has in the House of Commons. Every province or territory must have at least as many Members in the Commons as it has in the Senate.

Important Positions in Parliament

Some of the important positions in Parliament are:

The Speaker

After each general election, the Members of the House of Commons elect a Speaker from among MPs by secret ballot. The Speaker presides over the House of Commons and ensures that everyone respects its rules and traditions. The Speaker must be impartial and apply the rules to all Members equally.

The Speaker represents the Commons in dealings with the Senate and the Crown. The Speaker is also responsible for the administration of the House and its staff, and has many diplomatic and social duties.

The Prime Minister

The Prime Minister is the leader of the party in power and is the Head of Government. A Prime Minister's duties include presiding over Cabinet meetings, meeting official foreign delegations to Ottawa and answering questions in the House of Commons. Since the Prime Minister is usually a Member of Parliament (two Prime Ministers who held office in the 1890s were Senators), he or she also spends time helping constituents.

The Cabinet

The Prime Minister chooses the Cabinet Ministers, and the Governor General formally appoints them. Most are MPs, and there is often at least one representative from the Senate. The Prime Minister and Cabinet meet regularly to discuss and decide on various topics such as government spending, ideas for bills, and new policies, programs and services. Most Cabinet Ministers are in charge of a government department and they report on their department's activities to Parliament. There are also Ministers of State who are assigned to assist a Cabinet Minister in a specific area within his or her portfolio. These areas often concern government priorities.

A key feature of Cabinet is the concept of collective responsibility, which means that all Ministers share responsibility for the administration of government and for the government's policies. They must all support a Cabinet decision. They may not agree with it, but they have to support it in public. If a Minister cannot support a decision, he or she must resign from Cabinet.

Another important feature of our parliamentary system is responsible government. This means that the government must have the support of the majority of Members in the House of Commons to stay in power. In the British tradition, if the government loses a vote on a major measure, or on any motion of non-confidence, it is expected to resign or to ask the Governor General to call a general election.

Parliamentary Secretary

Parliamentary Secretaries are MPs in the House of Commons who are appointed by the Prime Minister to help Cabinet Ministers. They table documents or answer questions for a Minister, participate in debates on bills, attend committee meetings and speak on government policies and proposals, and serve as a link between parliamentarians and Ministers.

Leader of the Opposition and Critics

The role of the Official Opposition is to challenge government policies, hold the government accountable for its actions and give voters an alternative in the next election. Generally, the Leader of the Opposition is the leader of the party with the

second largest membership in the Commons. This person leads opposition debates and suggests changes to government legislation or alternative proposals. Each opposition party in the Commons has its own leader and appoints critics from among its members. Each critic handles a certain subject, such as health or defence. They present their party's policies on the subject and comment on government policies.

House Leaders

Each recognized party appoints one member to be its House Leader (a recognized party is one that has a minimum of 12 seats in the House of Commons). The House Leaders of all the parties meet regularly to discuss upcoming business in the Commons, how long bills will be debated and when special issues will be discussed.

Whips

Each recognized party also has a Whip. The Whips ensure that enough party members are in the Chamber for debates and votes. Given the many responsibilities MPs have, this is not always easy. The Whips also determine which committees a party member will sit on, assign offices and seats in the House, and discipline members who break party ranks.

House Officials and Pages

Seated at a long table in front of the Speaker are the Clerk and other procedural officials of the House. They advise the Speaker and Members on the rules to be followed in the Commons. The Clerk is the senior official of the House of Commons Administration and keeps the official record of proceedings. At the end of the Table lies the Mace, the symbol of the authority of the House of Commons. At the end of the Chamber, opposite the Speaker, sits the Sergeant-at-Arms. This person is responsible for security in the House of Commons and has ceremonial duties. House officials and Members are assisted by the pages who, among other duties, carry messages to the Members in the Chamber.

Check Your Progress

1. Who appoints the Governor General in Canada?
2. What is the term of the Governor General?
3. What are the duties of the Governor General?
4. What are the duties of the Parliamentary Secretary?

14.3 JUDICIAL SYSTEM

The judicial system of Canada, also known as 'The Queen on the Bench', refers to the court system in the country. There are several courts in the country which differs from each other in terms of legal superiority and jurisdiction. While some of the courts are federal, others are provincial or territorial.

As per the Constitution of Canada, the federal government has the right to legislate criminal law and the provinces have jurisdiction over much of civil law. The provincial courts hear both civil and criminal cases. On the other hand, the federal court only hears cases regarding matters which are under exclusive federal control, such as federal taxation, federal administrative agencies, intellectual property, some portions of competition law and certain aspects of national security.

Structure

The federal and provincial and territorial governments are all responsible for the judicial system in Canada.

Only the federal government can appoint and pay judges of the superior, or upper-level, courts in the provinces. Parliament can also establish a general court of appeal and other courts. It has created the Supreme Court of Canada, the Federal Court and the Federal Court of Appeal, as well as the Tax Court.

Parliament also has exclusive authority over the procedure in courts that try criminal cases. Federal authority for criminal law and procedure ensures fair and consistent treatment of criminal behaviour across the country.

The provinces administer justice in their jurisdictions. This includes organizing and maintaining the civil and criminal provincial courts and civil procedure in those courts.

Outline of Canada's Court System

The Supreme Court of Canada is Canada's final court of appeal. Its nine judges represent the four major regions of the country. Three of them must be from Quebec, to adequately represent the civil law system.

The Supreme Court has two main functions.

- It hears appeals from decisions of the appeal courts in all the provinces and territories, as well as from the Federal Court of Appeal. Supreme Court judgments are final.
- It decides important questions about the Constitution and controversial or complicated areas of private and public law. The government can also ask the Supreme Court for its opinion on important legal questions.

The federal government also established the Federal Court, the Tax Court and the Federal Court of Appeal.

NOTES

The Federal Court specializes in areas such as intellectual property, maritime law, federal–provincial disputes, and civil cases related to terrorism.

The Tax Court specializes in hearing appeals from tax assessments.

The Federal Court of Appeal reviews the decisions of both these courts. In fact, it is the highest court of the land for about 95 percent of all cases.

Provincial and territorial level courts

The court system is roughly the same across Canada. Except for Nunavut, each province has three levels: provincial and territorial, or lower, courts; superior courts; and appeal courts. The Nunavut Court of Justice has a single-level trial court.

Provincial and territorial courts

Provincial courts try most criminal offences, money matters and family matters. In private-law cases involving breach of contract or other claims of harm, the courts apply common-law principles in nine provinces and the territories. In Quebec, courts apply the *Quebec Civil Code*.

Provincial courts may also include specialized courts, such as youth courts, family courts, and small claims courts. Each provincial government appoints the judges for its own courts.

Superior courts

Superior courts are the highest level of courts in a province or territory. They deal with the most serious criminal and civil cases and have the power to review the decisions of the provincial and territorial courts.

Superior courts are divided into two levels: trial level and appeal level.

- The trial-level courts hear civil and criminal cases. They may be called the Supreme Court, the Court of Queen's Bench, or the Superior Court of Justice.
- The appeal-level courts, or Courts of Appeal, hear civil and criminal appeals from the superior trial courts listed above.

Although the provinces and territories administer superior courts, the federal government appoints and pays the judges.

Administrative boards and tribunals

There are other kinds of disputes that do not need to be dealt with in the courts. Different kinds of administrative tribunals and boards deal with disputes over the interpretation and application of laws and regulations, such as entitlement to employment insurance or disability benefits, refugee claims, and human rights.

Administrative tribunals are less formal than courts and are not part of the court system. However, they play an essential role in resolving disputes in Canadian

society. Decisions of administrative tribunals may be reviewed in court to ensure that tribunals act fairly and according to the law.

14.4 CANADIAN FEDERALISM

Canada has adopted a federal system due to the need to address the linguistic, economic, and cultural differences. The federal government has exclusive control over the entire country. Each provincial government has control over a section of the population and region. The powers of both these levels of government are derived from the written Constitution of Canada. However, it is to be noted that despite the testing of Canadian federalism throughout the country, it still remains a matter of debate.

Levels of Government in Canadian Federalism

Two levels of government have been identified in Canadian federalism. They are federal government and provincial government. Furthermore, there are other forms of government such as territorial and local government; they are not recognized by the Constitution. The following section discusses each level of government and the status of these governments with this federal framework.

Federal Level of Government

The federal or national government is the first level of the government, as identified by the Canadian Constitution. The federal government enacts and implements laws for the entire country. The federal government is endowed with its own constitutional powers and jurisdictions, which it exercises independently from the provincial level of government.

The national parliament of Canada is located in Ottawa, the capital of the country. The Parliament comprises the Monarchy (and his/her federal representative, the Governor General), and two legislative chambers. The legislative chamber consists of the House of Commons and the Senate.

Monarchy is the head of state for the federal government. However, the role of the Monarchy is mainly ceremonial as majority of the powers are with the federal head of the government and his/her executive council. These include the Prime Minister and the Cabinet as well the House of Commons. Compared to the elected House of Commons, the Senate exercises less power.

Another prominent federal institution is the federal judiciary. The federal judiciary includes the Supreme Court of Canada, the highest court in the country. Other important courts are the Federal Court of Appeal, the Federal Court, the Tax Court of Canada, the Court Martial Appeal Court, and the Courts Martial (the latter two are military courts). The national public service is another prominent federal institution; it includes those federal departments and agencies which are

responsible for helping the federal government form and implement policy within its jurisdictions.

Provincial Level of Government

The provincial level of government is the second constitutionally recognized level of government in Canada. Overall there are ten provinces in Canada, each of which has its own provincial government. These provinces are British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Newfoundland and Labrador, Nova Scotia, New Brunswick, and Prince Edward Island. The responsibility of these provincial governments is to enact laws and implement it in the area within their jurisdiction. Apart from this, the provincial government also exercises certain powers independently from the federal government.

The provincial government has its own legislative assembly. It is located in the respective provincial capital. The Monarchy is the provincial head of state. Similar to the federal level, the office is primarily ceremonial. The actual provincial power is in the hands of the provincial heads of government and their executive councils, known as the Premier and their Cabinets, as well as the provincial elected legislature.

The provincial government also comprises a provincial-level court system, which primarily includes provincial courts of appeal and provincial trial courts. These courts, which mainly focus on criminal, constitutional, civil, family, traffic, and bylaw cases, are hierarchically inferior to the Supreme Court. The provincial courts also have their own provincial public service. The provincial public service is responsible for helping the respective provincial government in terms of policy formation and implementation.

Check Your Progress

5. List the functions of the Supreme Court.
6. What are the different levels of government in Canadian Federalism?
7. Where is the national parliament of Canada located?
8. Name the two military courts in Canada.
9. List the provincial governments in Canada.

14.5 ANSWERS TO CHECK YOUR PROGRESS QUESTIONS

1. The Queen appoints the Governor General on the advice of the Prime Minister.
2. The Governor General usually serves for a period of five years.

3. The duties of the Governor General include: summoning, opening and ending sessions of Parliament; reading the Speech from the Throne; giving Royal Assent to bills; signing state documents; and dissolving Parliament for an election.
4. Parliamentary Secretaries are MPs in the House of Commons who are appointed by the Prime Minister to help Cabinet Ministers. They table documents or answer questions for a Minister, participate in debates on bills, attend committee meetings and speak on government policies and proposals, and serve as a link between parliamentarians and Ministers.
5. The Supreme Court has two main functions.
    - It hears appeals from decisions of the appeal courts in all the provinces and territories, as well as from the Federal Court of Appeal. Supreme Court judgments are final.
    - It decides important questions about the Constitution and controversial or complicated areas of private and public law. The government can also ask the Supreme Court for its opinion on important legal questions.
6. Two levels of government have been identified in Canadian federalism. They are federal government and provincial government. Furthermore, there are other forms of government such as territorial and local government; they are not recognized by the Constitution.
7. The national parliament of Canada is located in Ottawa, the capital of the country.
8. The Court Martial Appeal Court and the Courts Martial are two military courts in Canada.
9. Overall there are ten provinces in Canada, each of which has its own provincial government. These provinces are British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Newfoundland and Labrador, Nova Scotia, New Brunswick, and Prince Edward Island.

14.6 SUMMARY

- The executive branch consists of the Queen, the Prime Minister and Cabinet, and the departments of government. They implement the laws. The legislative branch makes the laws, and the judicial branch — which is not part of Parliament — interprets them.
- Canada is a constitutional monarchy. This means that the laws governing Canada recognize the Queen as the formal Head of State. The Queen appoints the Governor General on the advice of the Prime Minister. The Governor General usually serves for five years.

- The Senate studies, amends and either rejects or approves bills passed by the House of Commons. It can also introduce its own bills, except those to spend public money or impose taxes, which must be introduced in the House of Commons. No bill can become law until it has been passed by the Senate.
- The Senate has 105 members. Senators are appointed by the Governor General on the recommendation of the Prime Minister and hold office until age 75.
- Many laws in Canada first begin as bills in the House of Commons. In the Commons Chamber, Members devote most of their time to debating and voting on bills. The Chamber is also a place where Members represent constituents' views, discuss national issues and call on the government to explain its actions.
- Some of the prominent positions in the parliament are that of the Speaker, the Prime Minister, the Cabinet, leaders of the Opposition, Parliamentary Secretary, House leaders, Whips, and House officials and pages.
- The judicial system of Canada, also known as 'The Queen on the Bench', refers to the court system in the country. It includes provincial courts and the federal court.
- The Supreme Court of Canada is Canada's final court of appeal. Its nine judges represent the four major regions of the country. Three of them must be from Quebec, to adequately represent the civil law system.
- The federal government also established the Federal Court, the Tax Court and the Federal Court of Appeal. The Federal Court specializes in areas such as intellectual property, maritime law, federal–provincial disputes, and civil cases related to terrorism. The Tax Court specializes in hearing appeals from tax assessments. The Federal Court of Appeal reviews the decisions of both these courts. In fact, it is the highest court of the land for about 95 percent of all cases.
- Provincial courts try most criminal offences, money matters and family matters. Provincial courts may also include specialized courts, such as youth courts, family courts, and small claims courts.
- Superior courts are the highest level of courts in a province or territory. Superior courts are divided into two levels: trial level and appeal level.
- Administrative tribunals are less formal than courts and are not part of the court system. However, they play an essential role in resolving disputes in Canadian society.
- Two levels of government have been identified in Canadian federalism. They are federal government and provincial government. The federal or national government is the first level of the government, as identified by the Canadian Constitution.

- The provincial level of government is the second constitutionally recognized level of government in Canada. Overall there are ten provinces in Canada, each of which has its own provincial government. These provinces are British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Newfoundland and Labrador, Nova Scotia, New Brunswick, and Prince Edward Island. The responsibility of these provincial governments is to enact laws and implement it in the area within their jurisdiction.

14.7 KEY WORDS

- **Delegation:** Delegation refers to a body of appointees chosen to represent a political unit.
- **Whips:** Whips are members of a political party in the House of Commons, the Senate or a provincial legislature. They ensure that the discipline is maintained; they also assign and schedule speakers for bills, motions, and other proceedings.
- **Intellectual property:** Intellectual property refers to those intangible properties which are the result of the human intellect. Examples are copyrights, patents, trademarks and trade secrets.
- **Maritime Law:** Maritime law refers to the body of law which is concerned with nautical issues and private maritime disputes. It consists of domestic law on maritime activities as well as private international laws regarding the relationships between private parties operating in the ocean.

14.8 SELF ASSESSMENT QUESTIONS AND EXERCISES

Short-Answer Questions

1. What are the roles and responsibilities of Senators?
2. What are the responsibilities of Whips?
3. What is the role of Federal Court of appeal?
4. What are the two types of superior courts?
5. What are the functions of federal government and provincial government?

Long-Answer Questions

1. Explain the components of the parliamentary system in Canada?
2. Discuss the structure and the different levels of courts in the judicial system of Canada.

3. Analyse the roles and responsibilities of different levels of government in Canadian federalism.

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